1879

Argument commenced October 31st 1879. and continued Nov. 3d

Field

11-112

Oct. 31. 1879

Reversed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~251.~~ 38

THE WASHINGTON MARKET COMPANY, APPELLANT,

vs.

JAMES A. HOFFMAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 11, 1876.

SUPREME COURT OF THE UNITED STATES.

No. 251.

THE WASHINGTON MARKET COMPANY, APPELLANT,

vs.

JAMES A. HOFFMAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 *Bill of complaint.—Filed June* 19, 1874.

In the supreme court of the District of Columbia.

JAS. A. HOFFMAN
vs.
THE WASHINGTON MARKET COMPANY. } No. 3769. Equity docket 13.

The plaintiff shows—

1. That he is a resident of the District of Columbia and is by occupation a butcher.

2. That the defendant is a body politic and corporate, created such by an act of Congress entitled "An act to incorporate the Washington Market Company," approved May 20, 1870.

3. That by the second section of said act it was provided that said company, whenever any part of their buildings, stalls, stands, &c., for market purposes should be ready for occupancy, should offer the same for sale at public auction for one or more years to the highest bidder or bidders, subject to the payment of an annual rent, &c.; that stalls, stands, &c., should be let to the highest bidder, and there should be no bidding on the part of the company, but said company might fix a minimum rate of bids at such sale, and the person who should offer the highest price at or beyond such minimum for any stand, stall, or privilege, should be entitled to the occupation thereof, and should be considered as having the good-will and the right to retain the possession thereof so long as he chooses to occupy the same for his own business and pay the rents therefor.

4. That in pursuance of said powers the said company did, on the day of , A. D. 1872, offer at auction, to the highest bidder, a large number of stands and stalls in their market building, which had been at that time partially completed, and at such sale the plaintiff was
2 the highest bidder for stalls Nos. 634, 635, 636, having bid for the same a bonus of $510 for a term of two years from the first day of July, 1872, and plaintiff paid his bonus and has regularly paid his rents for the same without default.

5. That as plaintiff is advised, he became entitled, in virtue of his purchase, to hold said stalls as long as he might choose to occupy the same for his own business and pay the rent, notwithstanding the expiration of said term of years; that plaintiff in fact received his lease and entered upon the possession of said stalls, and has created a business and a good-will for the same, and paid the rents as aforesaid, and chooses and elects to continue to occupy the same for his said business.

6. But so it is that the defendant, erroneously assuming that it has power to offer said stalls again to the highest bidder for another term of years and exact another bonus or premium for the occupation of the same, besides the regular rents payable by the terms of the leasing, has caused said plaintiff's stalls and all the other stalls in their said market building to be advertised for another letting to the highest bidder, at an auction sale to be held on the 20th of June instant; and if said sale be allowed to take place, the plaintiff, by and through such proceeding and the competition of other bidders, may be deprived of his aforesaid possession and the good-will so as aforesaid created by him, or at the least a cloud may be thrown upon his title to the same and great injury result.

7. That even if said defendant is entitled to make such sale, it proposes to effect it in a manner not contemplated by law, in this: that

the law aforesaid requires the stall and stands to be offered for sale, whereas said defendant proposes to offer for sale the choice of stands in each of six classes of stands, &c., as is evidenced by a circular notice distributed amongst the market men, a copy of which is filed herewith marked Exhibit W. M. C. 1. The effect of such a mode of selling
3 is that the plaintiff, now in possession of stalls and desiring to retain the same, will be entirely ignorant at such sale whether his stalls are being bid for or not, and whether he has competitors or not, and might be compelled, in this ignorance, to pay a higher price or bonus in order to secure the choice of his stalls than if the same were distinctly exposed to auction; an inconvenience, risk, and loss to which the other market men are also exposed.

He therefore prays—

1. That said defendant may be made party hereto by proper process.

2. That said defendant may be enjoined and prohibited from proceeding with the sale of said plaintiff's stalls as aforesaid.

3. That your honors may by decree establish the plaintiff's right to retain possession of his said stalls as long as he chooses to occupy the same for his business as aforesaid, without the payment of any additional bonus for the same; and,

4. That the plaintiff may have such other relief as may be equitable.

JAMES A. HOFFMAN.

MERRICK & COX.
Solicitors for Plaintiff.

I do solemnly swear that I have heard read the bill above by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated on information and belief I believe to be true.

JAMES A. HOFFMAN.

Sworn to before me this nineteenth day of June, A. D. 1874.
[L. S.]
N. CALLAN,
Notary Public.

(Endorsement:) 3797. Equity doc. 13. Ja's A. Hoffman v. The Washington Market Company. Bill of injunction. The clerk will please file this bill and issue process. R. T. Merrick, W. S. Cox, for complainant. Filed June 19, 1874. R. J. Meigs.

4 NOTICE.

Conditions of sale of stalls and stands of the Washington Market Company at the adjourned sale on Saturday, June 20, 1874, at 10 o'clock a. m.

As at the first sale in 1872, the auctioneer will offer alternately the first, second, and subsequent choice of each class of stalls and stands described in the market regulations, viz:

First, butchers' stalls; second, hucksters' stands; third, bacon-dealers' stands; fourth, fish dealers' stands; fifth, butter-dealers' stands; and sixth, stands for miscellaneous sales.

The purchaser of any choice, upon depositing the first instalment of bonus bid by him, shall have the right to select immediately any stall or stand belonging to the class bid off by him not previously selected or sold to any other purchaser at auction.

For the convenience of dealers now occupying stalls or stands who may desire to repurchase and retain them for another term, the auction-

eer will be authorized on Saturday, June 20, 1874, to vary the course of the auction sale by offering and selling the right to occupy any particular stall or stand when the occupant requests that it be sold in that way, and is ready to start the bidding by an offer equal to the amount at which such stall or stand was struck off at the sale in 1872.

In all other cases the auction will proceed by sale of choices.

When a stall is bid off at the auction sale the bidder will be required to deposit one fourth of the amount with the clerk before he can choose or select his stall or stand; the other three-fourths to be secured by good endorsed bankable notes, bearing 8 per cent. interest, and payable in nine, eighteen, and twenty-seven months, respectively, from July 1, 1874.

M. G. EMERY,
President Washington Market Company.

(Endorsement:) 3797. Equity docket 13. Exh. W. M. C. 1. Hoffman v. Washington Market Company. Filed June 19, 1874. R. J. Meigs.

5 *Summons to answer.—Issued June* 19, 1874.

In the supreme court of the District of Columbia, June 19, 1874.

JAMES A. HOFFMAN, COMPLAINANT,
against
THE WASHINGTON MARKET COMPANY, DEFENDANT. } No. 3797. Equity docket.

The President of the United States to the Washington Market Company, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

[L. S.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.
Assistant Clerk.

MEMORANDUM.—That the defendant is to enter its appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise, the bill may be taken for confessed.

(Endorsement:) No. 3797. Equity docket 13. Spa. to ans. original bill. James A. Hoffman v. The Washington Market Company. Issued June 19, 1874. Returned June 22, 1874. Summoned and served notice for injunction on M. G. Emery, president of the market company. A. Sharp, marshal. June 20, 1874.

Restraining order.—Filed June 19, 1874.

(Endorsement:) Restraining order. An original bill praying an injunction to restrain the sale of stalls therein mentioned is this day filed.

Hearing is fixed for the 8th day of July, 1874, at 11 o'clock a. m. Until further order, you are hereby restrained as prayed.

By order of the court.

A. WYLIE,
Justice, &c.

6 *Affidavit of N. G. Ordway.—Filed July 9, 1874.*

I, N. G. Ordway, depose and say that I have been from its organization a stockholder and director of the present Washington Market Company; have also acted as member of the building committee and as superintendent of the market; and was auctioneer at the sale of 1872 of the right to occupy stalls and stands in the new or present market building; and have been familiar with all the operations of the market company from its beginning.

The auction sale in 1872 was regularly and fairly conducted on full and formal notice, and in all respects in accordance with the charter. There was no violation of any of its provisions on the part of the company, or of any officer or member, so far as I know or believe.

The record of the notice of sale, and of the sale and its various da journments, was duly entered on a book kept for that purpose.

With two or three exceptions, of stalls of a limited and special class, all sales were of the first, second, and subsequent choices of the right to occupy stalls and stands of the various classes specified in the market regulations, which, we were advised, was a natural, legal, and unobjectionable mode of sale. No objection was made to this mode by any dealer, that I remember. All sales, without exception, were also of the right to occupy for two years from July 1, 1872. This limit as to time was distinctly set forth in the advertisements of the sale; was publicly and clearly announced at the sale and each adjournment, and was fully and perfectly understood by all bidders and purchasers, and no dealer bought and selected a stand without being aware that he acquired a right for two years and no longer.

By the market regulations all purchasers were required to obtain permits before entering into possession, and to sign the market regulations. According to the permit the right of occupancy was for two years from July 1, 1872, and by the market regulations each occupant was
7 bound to quit and deliver up possession of the stand occupied by him at the end of his term.

Copies of the permits issued, of the market regulations, and the book of signatures of the market-dealers may be taken as a part of this affidavit.

The construction placed upon the charter by the Market Company and all the purchasers at auction that the stalls and stands were to be sold for a fixed term and to be resold at auction at the end of the term, was never doubted or questioned by any dealer, to my knowledge, until a few weeks ago, at the time of an application to Congress for a declaratory law that a purchase for two years should be deemed a purchase forever.

N. G. ORDWAY.

STATE OF NEW HAMPSHIRE,
Merrimack , *ss:*

July 6th, 1874, personally appeared N. G. Ordway before me and acknowledged the foregoing statement, by him subscribed, to be true, and made oath to the same.

STEPHEN S. BEAN,
Justice of the Peace.

(Endorsement:) 3797. Equity docket 13. Hoffman v. Washington Market Company. Affidavit of N. G. Ordway. Filed July 9, 1874. R. J. Meigs.

Permit. Stands Nos. 175, 176, 177.

WASHINGTON MARKET COMPANY.

is hereby entitled to occupy stands Nos. 175, 176, 177 in the buildings of the Washington Market Company as a butter-dealer for the term of two years from July 1st, 1872, paying therefor the quarterly rent, in advance, of sixty $\frac{75}{100}$ dollars, subject to the conditions of the charter and by-laws of the company, and the regulations of the company as from time to time established.

8 This permit will be of no effect until the holder has signed the regulations and paid all arrearages due the company, and it is transferable only in writing and upon a surrender hereof.

WASHINGTON MARKET COMPANY,
By M. G. EMERY, *President.*

Dated July 1, 1872.

Injunction order.—Filed July 9, 1874.

In the supreme court of the District of Columbia. July, 1874, special term.

JA'S A. HOFFMAN
v.
THE WASHINGTON MARKET COMPANY. } No. 3797. Equity docket 13.

This cause coming on to be heard upon the application of complainant for injunction, and being argued and considered upon the bill, the restraining order issued thereon, and the affidavit of N. G. Ordway, on behalf of the defendant, it is, this 9th day of July, 1874, ordered that the injunction as prayed for in the said bill be, and hereby is, awarded.

By the court.

A. W.

9 *Answer of defendant.— Filed Oct.* 19, 1874.

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN
vs.
THE WASHINGTON MARKET COMPANY. } No. 3797. Equity docket 13.

1. The defendant admits that the plaintiff is a resident of the District of Columbia, and is by occupation a butcher.

2. The defendant admits that it is a body politic and corporate, created such by act of Congress entitled "An act to incorporate the Washington Market Company," approved May 20, 1870, and avers that the defendant company was organized under section 15 of said act.

3. The defendant admits that the second section of said act provides substantially as stated in the plaintiff's bill, but the defendant sets out, in Exhibit A, annexed to this answer, the whole of said section 2 as being material to the issues in this case.

4. The defendant admits that it did, in 1872, offer at auction to the highest bidder a large number of stalls and stands in its market-building, which was at that time partially completed, and that at such sale the plaintiff was the highest bidder for stalls numbered 634, 635, and

636, having bid for the same a bonus of $510 for the term of two years from the first day of July, 1872.

The defendant denies that the plaintiff paid his bonus and has
10 regularly paid his rent for said stalls without default; but the defendant avers that the plaintiff took possession of his stand without paying the bonus or giving notes therefor, as required by the conditions of the sale; that he was afterwards compelled by the defendant to give his notes, which he failed to pay at maturity, and that he continued in default until about the time of bringing this suit, prior to which, however, he did pay the balance of the bonus due.

The defendant also avers that the plaintiff did not pay his rent regularly, but became and continued in default of prompt payment; that he did not pay his rent in season to obtain the twenty per cent. deduction allowed by the company for prompt payment; that the amounts paid by him were received by the company on account, and that he now owes the amount of twenty per cent. deduction claimed by him, but never allowed him by the company, amounting to sixty-four dollars and eighty cents ($64.80), due for rent prior to July 1, 1874, by reason of which neglect to pay his bonus and rents regularly, and his failure to pay said sum of sixty four dollars and eighty cents, all right to his stalls and stands became, and is, forfeited according to the market regulations, signed and agreed to by the plaintiff.

5. The defendant denies that the plaintiff became entitled in virtue of his purchase to hold his stalls as long as he might choose to occupy the same for his own business, and pay the rent, notwithstanding the said expiration of said term of years. The defendant admits that the plaintiff entered into possession of said stalls, and has created a business and a good-will for the same, but avers that the plaintiff did not receive his lease, or permit to occupy, until he gave his notes for bonus, as hereinbefore stated.

6. The defendant admits that it does claim that it has power to offer said stalls for another term of years, and to receive another bonus or premium for the occupation of the same, besides the regular rents, and that it caused said plaintiff's stalls and all the other stalls in said market building to be advertised for another letting to the highest bid-
11 ders at an auction sale to be held on the 20th of June last; and the defendant admits that, by such proceeding and the competition of other bidders, the plaintiff may be deprived of his aforesaid possession and good-will so as aforesaid created by him, to which the defendant claims the plaintiff, according to law, has no right after July 1, 1874, except by a repurchase from the defendant.

The defendant claims that it has power to resell the stalls in its market buildings for another term of years after the expiration of the first term on July 1, 1874, because such is the correct construction of the aforesaid section 2 of the act of May 20, 1870, which could never have contemplated that the value, either as against the company or as against dealers who might desire to enter the market, should be fixed forever by the price paid at a sale for only two years.

All sales of stands, without exception, were of the right to occupy for two years from July 1, 1872. This limit as to time was distinctly set forth in the advertisements of the sales; was publicly and clearly announced at the sale and at each adjournment, and was fully and perfectly understood by all bidders and purchasers; and all dealers, including the plaintiff, bought and selected their stands with a knowledge that they acquired a right for two years, and no longer.

By the market regulations all purchasers were required to obtain per-

mits to enter into possession, and were required to sign the market regulations; and the plaintiff so signed and obtained and accepted his permit. According to the permit the right of occupancy was for two years from July 1, 1872, and by the market regulations each occupant was bound to quit and deliver up the occupation of the stand occupied by him at the expiration of his term. A copy of the permit issued to and accepted by the plaintiff is annexed to this answer, marked Exhibit B. There is also annexed a copy of the market regulations marked Exhibit C, and the agreement and signature of the plaintiff marked Exhibit D, which is the same as the agreement signed by the other dealers.

12 The construction placed upon the charter by the market company and by the purchasers at auction, including the plaintiff, that the stalls and stands were to be sold for a fixed term, and to be resold at auction at the end of the term, was never disputed by any dealer, to the knowledge of the defendant, until May, 1874, at the time of the application by plaintiff and other dealers to Congress for a declaratory act that a purchase for two years should be deemed a purchase forever.

Dealers who had purchased at auction, when selling and transferring their rights, in accordance with the aforesaid section 2, never sold or attempted to sell them for a longer period than until July 1, 1874. Many sales of this character were made, and about thirty-three per cent. of the stalls in the market have, since the original sale at auction, changed hands on this construction of the law.

Many purchasers of stalls, during their two years' term, abandoned them, not claiming that they had any rights after the two years' term, and in such cases the company retook possession, and resold to other dealers the right of possession for the balance of the two years' term, but never beyond that. The sales from one dealer to another and the abandonments have amounted to about fifty per cent. of all the stalls in the market.

Since the construction now put by the plaintiff upon section 2 was set up in May last some original purchasers who had abandoned their stalls have returned and dispossessed the parties in possession, generally with a view of speculating therein, and in some cases worthless and irresponsible parties have thus retaken possession.

7. The defendant admits that it proposes to offer for sale the choice of stands in each of six classes of stands, as appears by its circular notice of sale, a copy of which is annexed to the plaintiff's bill, marked W.

The defendant states that, with two of three exceptions of stalls of a limited and special character, all sales at the original auction of

13 1872 were of the first, second, and subsequent choices of the right to occupy stalls and stands of the various classes described in the market regulations; that the company was advised that this was a natural, legal, and unobjectionable mode of sale, and it was believed to be the only method by which the true value of each stall could be determined, and a combination of a few dealers and speculators to buy the best stalls at nominal prices be prevented. No objection was made to this mode of sale by any dealer.

Notwithstanding the legality of this mode of sale, the company at the new sale determined, in order to afford every possible advantage to dealers who desired to retain for another term their stands and the business they had built up, to offer for sale, prior to offering choices, particular stalls, and under this method of sale nearly one-third of the

stalls have been sold without any injurious results from competition to present occupants.

WASHINGTON MARKET COMPANY,
By P. S. SMITH, *Clerk.*

WM. E. CHANDLER,
Solicitor for the Defendant.

Sworn and subscribed before me this 19th day of October, A. D. 1874, by P. S. Smith, clerk of Washington Market Company, who made oath that the above statement is true.

[L. S.] SAM'L C. MILLS,
Notary Public.

14 EXHIBIT A.

Public, No. 67. Approved May 20, 1870.

SEC. 2. And be it further enacted, That said company is hereby authorized and empowered to locate and construct a suitable building or buildings upon the following-described grounds, namely: commencing at the intersection of the centre line of B street north with the west line of Seventh street west, running thence north along the west side of Seventh street to the southerly side of Pennsylvania avenue; thence westerly along the southerly side of Pennsylvania avenue to the southerly side of Louisiana avenue; thence westerly along the southerly side of Louisiana avenue to the east side of Ninth street west; thence along the east line of Ninth street to the centre line of B street; thence along the centre line of B street to the place of beginning; and to use and occupy the same by the erection of a suitable building or buildings for a public market-house, including the necessary stalls and sheds, and also for stores, public halls, and such other purposes as may be determined by said company, not inconsistent with its use as a public market. The buildings herein designated to be used for the purposes of a market shall be used for no other purpose inconsistent therewith, but the same shall remain a public market as hereinbefore described. And the said company shall, whenever any part or parts of said buildings, stalls, stands, and so forth, for market purposes, are ready for use or occupancy, offer the same for sale at public auction for one or more years, to the highest bidder or bidders, subject to the payment of an annual rent, the amount of which to be fixed by the mayor and common council of the city of Washington and the directors of this incorporation; and public notice shall be given of the day of said sale in two or more daily newspapers published in the city of Washington, for two weeks previous to said sale, and by handbills to be posted up in said market grounds ten days previous thereto; and all subsequent sales and leases thereof shall be made on similar notice and in the same manner; and the said company shall have full power to assess and collect rents for the use of said buildings, stands, stalls, and grounds aforesaid.

15 The stalls, stands, and privileges of all kinds in said market to be used for market purposes, when offered at public sale, shall be let to the highest bidder, and there shall be no bidding on the part of said company, directly or indirectly; but said company, with the consent of the mayor and aldermen of the city of Washington, may fix a minimum rate of bids at such sale; and the person who shall offer the highest price at or beyond such minimum for any such stand, stall, or privilege, shall be entitled to the occupation thereof, and shall be

considered as having the good-will and the right to retain the possession thereof so long as he chooses to occupy the same for his own business and pay the rent therefor; and the rent shall only be raised on application to the mayor and common council, who, after hearing the parties, may change and determine the same: Provided, however, That such right to the possession of such stands or stalls may be sold and transferred by such purchaser, under regulations to be fixed by the by-laws of said company, and in the case of the death of any such purchaser during the existence of his lease, it shall be disposed of as other personal property; and the municipal government of said city shall at all times have power to make and enforce such regulations with regard to said market and the management thereof as in their judgment the convenience, health, and safety of the community may require.

EXHIBIT B.

Permit.—Stand No. .

WASHINGTON MARKET COMPANY.

is hereby entitled to occupy stand No. , in the buildings of the Washington Market Company, as a , for the term of two years from July 1st, 1874, paying therefor the quarterly rent, in advance, of dollars; subject to the conditions of the charter and by-laws of the company, and the regulations of the company as from time to time established.

This permit will be of no effect until the holder has signed the regulations, and paid all arrearages due the company, and it is transferable only in writing, and upon a surrender hereof.

WASHINGTON MARKET COMPANY,
By M. G. EMERY, *President.*

Dated , 187 .

16 EXHIBIT C.

This exhibit is the "Washington Market Company regulations," as annexed to testimony of B. D. Whitney, post page 25.

EXHIBIT D.

Signatures to market regulations.

The undersigned hereby agree to occupy stands or stalls in the buildings and grounds of the Washington Market Company, subject to a full compliance with all laws of Congress and of the District, the charter and by-laws of the company, and the regulations of the company as from time to established.

(Signed) JAMES A. HOFFMAN.

Filed Oct. 19, 1874.

Replication.—Filed Dec. 5, 1874.

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN, COMPLAINANT,
v.
THE WASHINGTON MARKET COMPANY, defendant.
No. 3797. Equity docket 13.

The complainant joins issue with the defendant.

R. T. MERRICK,
Solicitor and of Counsel for Complainant.

17 *Amended bill.—Filed May 28, 1875.*

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN
vs.
THE WASHINGTON MARKET COMPANY.

1. By the terms of a stipulation with the defendant, a copy of which is herewith filed, marked Exhibit A, and prayed to be taken as part of this amended bill, and by leave of the court for that purpose first had and obtained, the complainant files this amended bill, as of the date of the filing of said original bill, and thereupon, under the terms of said stipulation, the following-named persons are hereby made co-complainants in said cause, to wit:

	Number of stands, &c.
Anderson, W'm S	436, 437, and 438.
Acton, John C	582, and one-half of 581.
Augustefer, Frank J	619, and one-half of 620.
Auth, Santa	33, and one half of 32.
Arnold, Theresa	146 and 147.
Bradley, H. J	463 and 466.
Barnes, Theodore	599 and 600.
Brooke, F. I	70, and one-half of 71.
Bakersmith, Henry	631.
Bray & Co	174.
Brooke, Clement H	576, and one-half of 575.
Brown, s'r, W'm H	99, 128, 129, 130 (and house No. 14).
Brooke, Edward	613 and 614.
Barber, George	632 and 633.
Beach, H. L	400, 401, and 402.
18 Botsch, L	Half of Hoffman's stands.
Buscher, J. Henry	541 and one-half of 540.
Berry, E. A	550.
Brothers, L. J	5.
Buettner, Henry	211 and one-half of 212.
Backersmith, J	655.
Brenahan, John	One-half of 95 and 96.
Brown, Walter S	612 and one half of 611.
Barber, L. F	One-half of 138 and 139.
Barnes, Ellen (G. W. Barnes)	221 and 222.
Beck, Jacob	½ of 206 and 207.
Cissel, Thomas F	542 and one-half of 543.
Crown, Jos. H	178 and 179.
Cross, James	43, 44, and 45.
Cheek, James H	431, 432, and 433.
Coggins, Sam'l S	143 and one-half of 144.
Coburn, H. C	493 and 494.
Chandler, Geo. T	235, 236, and 237.
Coleman, Geo. W	112 and 113.
Coleman & Son, D. E	349, 350, and 351.
Carl, George	16 and one half of 17.
Carrol, Jos. G	One-half of 56 and 57.
Davidson, W'm A	183.
Dietz, F	649 and one-half of 650.

Davidson, John H.....646.
Devote, Anton .....79, 80, and 81.
Dries, John.....337, 340, and 341.
Dondero, B .....661.
Daly, John M.....½ of 47 and 48.
Dillow, F. T .....319, and one-half of 320.
Dunn, John..... 119, and one-half of 120.
Donaldson, B. S .....382, 383, and 384.
Dix, William ..... 316.
Donaldson, T. G .....232 and one-half of 233.
Emerson, Orlando.....109, 110, and 111.
Ebert, John .....One-half of 558 and 559.
Engle, C .....625, 626, and 627.
Elliott, B. S .....106 and 107.
Eagleston, John .....651 and one-half of 650.
Eichorn, Rudolph .....151, 152.
Etchison, King .....616.
Ebel, Charles (Andrew Loefler) ..... 637 and one-half of 638.
19 Emmert, George .....213 and one-half of 212.
Fearson, J. C .....181 and 182.
Fitzpatrick, James .....483.
Fry, J. H.....498 (218 and 219.)
Faunce, C ..... 283, 284, and 285.
Faunce & Son, J. D .....238, 239, 240.
Fearson, C. D.....321 and one-half of 320, 347, and 348.
Frank, Jacob .....496 and 497.
Gheen, B. W .....19, 20, and 21.
Goebel, J. G .....598.
Gruenapple, F .....467, 468, and 489.
Geier, Bernard .....54 and one-half of 53.
Glick & Son, J. H.....36 and one-half of 35.
Goetzinger, John .....475 and one-half of 476.
Gheen, Enos W .....67 and one-half of 68.
Gummel, Edward ..... 530 and one half of 531.
Golly, Ben .....259, 260, and 261.
Geier, Joseph.....31 and one-half of 32.
Gaigler, John .....214.
Gotthardt, George.....88
Hoffman, Jas. A .....634, 635, and 636.
Homiller, M. H .....103, 104, and 105.
Hammond, John .....403, 404, and 405.
Hunt, B. F ..... 566, 567, and 568.
Hoover, W'm H .....122 and one half of 123.
Howard, Frank .....529.
Hoover, S. S ..... 52 and one-half of 53.
Holmead, W'm .....231 and one-half of 230.
Hoover & Bro., John A .....82, 93, and one-half of 92.
Horning, Peter F .....137 and one-half of 138.
Holsten, A. H. F .....664 and 665.
Hall, G. I .....415, 416, and 417.
Heitmueller, Louis .....445.
Hough, W. W .....486.
Huhn, M'r's J .....65.
Heine, W'm.....412, 413, and 414.

Hawes, Cha's W ..... 421, 422, and 423.
Haas, Fred ..... 583.
Hughes, Rebecca ..... 208.
Hess, Valentine ..... 364 and 365.
Homiller, Charles ..... 89 and 90.
Harrington, Dennis ..... 270.
20 Jenkens, T. T ..... 253, 254, and 255.
Jaisen, W'm T ..... One-half of 476 and 477.
Johnson, C. H ..... 656 and 657.
Kengla, L. C ..... 73 and one-half of 74.
Kengla, Joseph F ..... 525 and 526.
King, R. F ..... 271, 272, 273, 274, 275, and 276.
Kaiser, John ..... 533 and 534.
Kehl, John ..... 577.
Krause, Henry ..... 603 and one-half of 602.
Kieney, Christ ..... 574 and one-half of 575.
Kuhlemann, Charles F ..... 290 and 291.
Krafft, Geo. S ..... 161 and 162.
Kengla, W'm T ..... 39 and one-half of 38. (Half of 50.)
Kahlert, F. W ..... One-half of 191 and 192 (49 and one.)
Killian, L. G ..... 69 and one-half of 68.
Kahlert, G ..... 157 and 158.
Kengla, Jacob H ..... 610 and one-half of 611.
Kelley, John R ..... 628, 629, and 630.
Kern, George ..... One-half of 362 and 363.
Kramer, Andrew ..... One-half of 120 and 121.
Kaiser, Justus ..... 662.
Lightfoot, J. J ..... 578 and 579.
Lancaster, E. F ..... 532 and one-half of 531.
Linkius, W'm ..... 617 and 618.
Lavender & Son, James ..... 301, 302, and 303.
Lauer, George ..... 100 and 101.
Limerick & Bro., James ..... 217 and 220.
La Fontain, James ..... 367, 368, 369, 380, and 381.
Lavender, j'r, M'r's James ..... 244 and 245.
Levy, Leopold F ..... 464 and 465.
Leis & Roth .....
Merhling, Daniel ..... 28 and 29.
Mann, R. C ..... One-half of 638 and 639.
Murray, A ..... 546 and 547.
Mathews, Henry ..... 342.
McGee, James ..... 168 and one-third of 167.
Miller, Jacob ..... 166 and two-thirds of 167.
Miller, William ..... 453 and one-half of 452.
Miller, Thomas J ..... 15 and one-half of 14.
Mueller & Son, Carl ..... 658, 659, and 660.
McCauley, Joseph ..... 288 and 331.
Menke, M ..... 169, 170, and 171.
21 Oyster, Geo. M ..... 175, 176, 177, 490, 491, and 492.
Ockstadt, C ..... 187, 188, and 189.
Pfiel, John K ..... 514.
Poore, W'm F ..... 563.
Pettit, Benj ..... 569 and 570.
Pfleuger, John J ..... 592 and one-half of 593.
Pillsbury, H. P ..... 442 and 443.
Rabbit & Crown ..... 605, 606, 640, 641, and 642.

Ruppert, Anton .....75 and one-half of 74.
Rasher, E.....551, 552, and 553.
Ruppert, John .....580 and one-half of 581.
Riley, Samuel.....601 and one-half of 602.
Ruppert, Gustavus .....114 and 115.
Ruppert, Henry.....91 and one half of 92.
Roover, John .....268 and 269.
Reisinger, John C.....615. Petition May 23 to be dismissed.
Reisinger, J. H.....3.
Schoepler, M'r's A.....306.
Sheele, A. D.....34 and one-half of 35.
Smith, Robert .....145 and one-half of 144.
Schneider & Bro .....37 and one-half of 38.
Sherwood, Perry ..... 637.
Stewart, W. Randolph .....527 and 528.
Stewart, W. E..... 286 and 287.
Shreeve, J. H. & W. O.....394, 395, 396, and House No. 9.
Schafer, C .....13 and one-half of 14.
Schrott, Henry.....456 and one-half of 455.
Sacks, E. J .....343.
Schneider, Charles .....595 and 506.
Stuebner, August .....64.
Schrott, Charles .....454, one-half of 455; 451 and one-half of 452.
Schafer, Charles.....535 and 536.
Straus, A. C .....439 and one-half of 440.
Schwier, Henry .....441 and one-half of 440.
Seitz & Son, George.....159 and 160.
Skidmore, James .....332, 333, 334, and 335.
Tucker, R. A.....76, 77, 78, and House No. 4.
Thompson, R. L.....292, 293, 294, and 289.
Teuber, Frank .....163 and 164.
Turner, William.....140, 141, and 142.
Toliver, B.....480.
22 Tompkins, M'r's .....354.
Vogt, Frederick .....4.
Vogt, John F .....507 and 508.
Varnieff, George .....537 and 538.
Whalen, Henry T.....571, 572, and 573.
Whitmore, J. R.....One-half of 590 and all of 591.
Widmeyer, Chris.....18 and one-half of 17.
Wooster & Adams.....446, 447, 450, 449, and House No. 10.
Watson, H. C.....499 and one-half of 500.
Williams, C. J .....325, 326, and 327.
White, James.....389 and 390.
Wiedman, G. W.....1.
Weaver, M. C.....562.
Wheatley, Andrew J.....317 and 318.
Wetzell, J. W.....315.
Westmeyer, F.....66.
Widmeyer, M'r's John.....86 and 87.
Weider, W.....457.
Warthen & Bro., R. C.....564 and 565.
Warthen Bros.....One-half of 596 and 597.
Yeabower, Christ.....560 and 561.

Yeabower, John..... .. 30.
Zeller, L..... .....539 and one-half of 540.

And they allege and show as follows:

2. Said complainants are residents of the District of Columbia, and engaged as market dealers, doing business in the Centre or Washington Market.

3. The defendant is a body politic and corporate, created such by act of Congress, entitled "An act to incorporate the Washington Market Company," approved May 20, 1870.

4. That by the said section of said act it is provided that said company shall, when any part of their buildings, stalls, stands, &c., for market purposes are ready for use and occupancy, offer the same for sale at public auction for one or more years to the highest bidder or bidders, subject to the payment of an annual rent, the amount of which is to be fixed by the mayor and common council of the city of Washing-
23 ton, and the directors of said company, etc.; that said stalls, stands, etc., shall be let to the highest bidder, and there shall be no bidding on the part of the company; but that said company, with the consent of the mayor and aldermen of the city of Washington, may fix a minimum rate of bids at such sale, and the person who offers the highest price at or beyond such minimum, for any such stand, stall, or privilege, shall be entitled to the occupation thereof, and shall be considered as having the good will and right to retain possession thereof so long as he chooses to occupy the same for his own business, and pay the rent therefor.

5. That, in pursuance of said authority and execution of said powers, the said company did, on the day of , A. D. 1872, offer at auction, to the highest bidder, for the term of two years, from the first day of July, 1872, to be held under its charter as aforesaid, a large number of stands and stalls in its market building, which had been at that time partially completed; and at such sale the plaintiffs were each respectively the highest bidder for the stalls or stands numbered opposite their several names as above set forth, and have paid respectively the amounts bid therefor, and duly discharged their liability for the same; and said plaintiffs further say that they have regularly paid rent for the same, up to the date of the filing of this bill, as demanded by said company, without default.

6. That as plaintiffs are advised, they became entitled, in virtue of their respective purchases as aforesaid, to hold the stalls or stands severally purchased by them so long as they might choose to occupy the same for their own business and pay the rent, notwithstanding the expiration of said term of years; that plaintiffs in fact severally entered upon said stalls, and each for himself has created a business and a good will, and severally paid the rents as aforesaid, and chooses and elects to continue to occupy the same for his said business under the provisions of the charter of said company.

7. But so it is that the defendant, erroneously assuming that it has power to offer said stalls again to the highest bidder for another term of years, and exact further bonus or premium for the occupation of
24 the same, besides the regular rents payable by the terms of the leasing, has caused the said plaintiffs' stalls and all the other stalls in said market building to be advertised for another letting to the highest bidder, and if said sale be allowed to take place, the said plaintiffs, by and through such proceeding and the competition of other bidders, may be deprived of their said several possession and the good

will so, as aforesaid, created by them respectively, or, at the least, a cloud may be thrown upon their respective titles to the same, and great injury result to them.

8. That even if said defendant is entitled to make such sale, it proposes to effect it in a manner not contemplated by law, in this: that the charter aforesaid requires the stalls and the stands to be offered for sale, whereas said defendant proposes to offer for sale the choice of stands in certain classes of stands. The effect of such a mode of selling will be that the several plaintiffs now in the possession of stalls, and desiring to retain the same, will be entirely ignorant at such sale whether the particular stalls held by them, respectively, are being bid for or not, and might be compelled to pay a higher premium or bonus in order to secure a choice whereby the stall with which the good will of his business is connected might come into his possession.

9. But said plaintiffs respectfully submit that said defendant is not entitled to make such sale, and that they have respectively the right to hold in perpetuity the stalls or stands severally purchased by them, as aforesaid, having elected so to do under the provisions of said charter; and they respectfully show that the original corporators of said defendant, in the various bills submitted at their instance to the Congress of the United States as schemes for the incorporation of the defendant company, caused to be inserted provisions giving it authority to sell the stands or stalls of said market for certain periods of time, and at the expiration thereof to resell the same; but said provisions were uniformly modified when any of said bills came up for consideration, so that the power of resale was stricken therefrom, and either absolutely prohibited, or a right assured to the purchaser at the first sale that he might hold in perpetuity at his election, as now provided in said
25 charter. That on the 11th of January, 1869, a bill to incorporate the Washington Market Company was introduced in the Senate of the United States, authorizing a resale, as aforesaid, and which was on consideration amended by the insertion of a provision that the purchaser of any stand or stall should "be considered as having the good will and right to retain possession thereof so long as he chooses to occupy the same for his own business, and shall continue to *to* pay rent therefor," as will more fully appear by the journals of that date, and of the third session of the Fortieth Congress, to which said plaintiffs beg leave to refer, and also by a copy of said bill and amendment thereto, herewith filed and marked Exhibit C, and prayed to be taken as a part of this bill of complaint. That at the second session of the Forty-first Congress a bill was introduced into the House of Representatives to incorporate the Washington Market Company, designating as the incorporators the several persons who appear to have been created such by the charter or act of incorporation under which the said defendant became a body-corporate. That in and by said original bill, as brought forward at the instance of said corporators, it was, among other things, provided that the purchasers at the sale of stalls to be made by the proposed company should have the right to retain the possession of the stalls so purchased by them "for the term for which the sale might be made;" but on or about the 4th day of April, 1870, said provision was stricken out, and in lieu thereof it was provided that the purchaser at such sale should retain possession of the stall purchased by him "so long as he chooses to occupy the same for his own business, and pay rent therefor," as will appear by reference to the House and Senate journals of the second session of the Forty-first Congress, and the official report of its proceedings, to which these plaintiffs beg leave

to refer, and also by copy of said bill and amendments thereto herewith filed, marked Exhibit D, and prayed to be taken as part of this bill of complaint. And said plaintiffs aver that said bill so amended, as aforesaid, became the charter of said defendant, approved May 20th, 1870.

10. That the grounds upon which by the charter said defendant
26 was authorized to construct its buildings had been dedicated for the purpose of a public market in 1801, and by various acts of Congress placed under the control of the municipal government of Washington City, and on the 6th of October, 1802, said municipal government located a market thereon, calling it the Centre Market; that stalls or stands in said market were thereafter, from time to time, sold to market dealers under the provisions of various municipal ordinances, in consideration of the payment by the purchaser of a certain premium or bonus for the right of occupancy, and a certain license or annual rental, to which said ordinances and public records of the city of Washington in relation thereto these plaintiffs beg leave to refer, and they respectfully show that at the time of the incorporation of said defendant company they respectively held stalls or stands in said market, purchased directly from the city under said ordinances, or as assignees of the title thereto originally purchased, and they respectfully show that said limitation imposed by the charter of the defendant as to the resale was in just consideration of the rights of these plaintiffs, and of the market dealers, and in response to earnest objections to the unlimited authority and control sought by said incorporators over the premises in question.

11. These plaintiffs further show that the contemporaneous construction of said act of incorporation was in accordance with the claim of these plaintiffs, and that they, together with other dealers in said Centre Market, were officially informed by the duly authorized representatives of said company that purchasers at the sale of stalls in said market under said charter would obtain a right to occupy in perpetuity the stalls or stands so purchased; that, at a meeting between the representatives of the market dealers and the representatives of the defendant company, held in the city of Washington on or about the 20th of December, 1870, for the purpose of considering and determining the relation between said dealers and said company, and the rights and privileges possessed and to be acquired under the charter by said dealers in said market-house, and when said company was preparing to erect said market-house, it was declared to said dealers, by Alexander R. Shepherd, one of the corporators of said defendant, and one of the repre-
27 sentatives of said defendant at said meeting, that said dealers would have "vested rights in the stalls of the new market-house which would belong to them for all time to come"; that said declaration was accepted by said dealers as a just and true construction of the charter of said company, and an assurance of the right they would acquire by purchase at the sale to be had under said charter. The proceedings of this meeting were public, and were made known to the parties in interest who were not present by a report from those representing the dealers, and by statements published on the following day in the public journals of the city, as will appear by their issues of that date herewith filed, marked Exhibit E.

12. These plaintiffs further show that by the second section of the charter of the defendant it is provided that the sale therein authorized shall be made at public auction and "subject to the payment of an annual rent, the amount of which is to be fixed by the mayor and common council of the city of Washington, and the directors of said corporation." And these plaintiffs submit that such sale, even if it so be that there is

authority for making the same, should not be made until the amount of said rent is ascertained and fixed in accordance with said provision of said charter, which they aver has not been done. Since their occupancy by virtue of the purchase made as aforesaid, they have submitted to a rate of rental arbitrarily imposed contrary to law in the hope from time to time that said defendant would comply with the requirements of its said charter, and have the rents of stalls and stands equitably adjusted as therein required.

These plaintiffs therefore pray—

1. That said defendant may be made a party hereto by proper process.

2. That said defendant may be prohibited and enjoined, under the stipulation herewith filed as Exhibit A, from proceeding to sell the stalls or stands of said plaintiffs until the final determination of this case, and that there may be decreed a perpetual injunction restraining and prohibiting such sale.

28 3. That your honors may decree the right of each of these plaintiffs respectively to retain possession of his said stall or stand as long as he chooses to occupy the same for his business as aforesaid without the payment of any additional bonus.

4. That the plaintiffs may have such other and further relief as may be equitable and just.

J. A. HOFFMAN,
By R. K. E.

R. T. MERRICK,
R. K. ELLIOTT,
For Complainants.

Amended bill and Exhibits A, B, C, D.—(A, C, D, E.)—Filed May 28, 1875.—R. J. Meigs.

JAMES A. HOFFMAN
v.
WASHINGTON MARKET COMPANY. } 3797. Equity docket 13.

29 EXHIBIT A.

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN, COMPLAINANT,
vs.
THE WASHINGTON MARKET COMPANY, DEFENDANT. } No. 3797. Equity docket.

The parties hereby stipulate and agree as follows:

That an amended bill may be filed in this case before May 31st, 1875, to stand in the place and stead of the original bill, and to be filed as of the date of filing the said original bill, with leave to the defendant to answer the same; that the rights of all parties represented and named in said bill, concerning stalls or stands in the market buildings of the defendant, shall be adjudicated in this suit; that the proofs already taken shall stand and be read in evidence, subject to all legal exceptions; and that, in the meantime, an injunction shall be awarded to restrain

the sale by the defendant of the stalls or stands claimed by the parties represented and named in said amended bill.

(Signed) R. T. MERRICK,
R. K. ELLIOT,
Counsel for Plaintiff.
JOS. H. BRADLEY,
WILLIAM BIRNEY,
W'M E. CHANDLER,
Counsel for Defendant.

MAY 22, 1875.

Filed May 28, 1875.

30 EXHIBIT C.

Filed May 28, 1875. Is not printed in full.

It is Senate bill No. 752, 40th Congress, 3d Session, introduced by M'r Rice, January 11, 1869; referred to the Committee on Public Buildings and Grounds, and January 25, 1869, reported by M'r Fessenden, with amendments, viz.: Strike out the parts in [brackets] and insert the parts printed in *italics*.

It is entitled "A bill to incorporate the Washington Market Company."

Section 2 is as follows:

SEC. 2. And be it further enacted, That said company is hereby authorized and empowered to locate and construct suitable buildings upon the following described grounds, namely: Commencing at the intersection of the Washington canal and Seventh street west; running thence northerly along the west side of Seventh street to the southerly side of Pennsylvania avenue; thence westerly along the southerly side of Pennsylvania avenue to the easterly side of Ninth street west; thence southerly along the easterly side of Ninth street west to the northerly side of the Washington canal; thence easterly along the north side of the canal to the place of beginning; and to use and to occupy the same for a public market and commercial purposes, and erect anp maintain suitable buildings for stores and public halls, and stalls, sheds, and so forth, for market purposes. The buildings for stores and halls to be of stone, brick, and iron, not less than fifty feet to the eaves, and not less than eighty feet deep, extending along the southerly side of Pennsylvania avenue from the west side of Seventh street to the east side of Ninth street aforesaid. That from the rear of the building, on Pennsylvania avenue, along Seventh street, and along Ninth street, as well as along the canal, there shall be erected suitable buildings for market purposes. Over the first story *of* the building on Seventh street there be constructed halls, rooms, and apartments for the ample accommodation of the mayor and all other city officers, as well as for the city councils, and also for the police headquarters (affording the latter room for cells), all of which shall be free of any rent or charge for the use thereof, *and which shall be kept in good repair by said company.* There shall be one or more entrances to said market-grounds between Seventh and Ninth streets on Pennsylvania avenue, of suitable width and height for the accommodation of pedestrians, and suitable entrances on Seventh and Ninth streets for horses, wagons, and so forth. That within the hollow square, formed by the buildings aforesaid, suitable buildings shall be erected for all necessary market purposes as now carried on

the Centre Market, and all the ground within said square shall be suitably paved. [Said market-grounds, buildings, stalls, stands, and entrances to the same, when constructed, shall constitute and remain a public market and grounds forever.] *The grounds herein designated to be used for the purposes of a market and for the use of the city government, shall be used for no purpose inconsistent therewith, but the same shall remain a public market as hereinbefore described.* And the said company shall have the right, whenever any part or parts of said buildings, stalls, stands, and so forth, for market purposes are ready for use or occupancy, to offer the same for sale at public auction for one or more years to the highest bidder or bidders, and public notice shall be given of the
31 day of said sale in two or more daily newspapers published in the city of Washington for two weeks previous to said sale, and by handbills, to be fixed up in said market-grounds ten days previous thereto; and all subsequent sales and leases thereof shall be made on similar notice and in the same manner; and the said company shall have full power to assess and collect rents for the use of said buildings, stands, stalls, and grounds aforesaid; *Provided* [That nothing in this act contained is intended to curtail the acts or ordinances of the boards of aldermen and common council of the city of Washington in relation to the said Centre Market or the management thereof except as above specified]. *The stalls, stands, and privileges of all kinds, in said market, to be used for market purposes, when offered at public sale, shall be let to the highest bidder, and there shall be no bidding on the part of said company, directly or indirectly; but said company, with the consent of the mayor and aldermen of the city of Washington, may fix a minimum rate of bids at such sale; and the person who shall offer the highest price, at or beyond such minimum, for any such stand, stall, or privilege, shall be entitled to the occupation thereof, and shall be considered as having the good will and the right to retain possession thereof so long as he chooses to occupy the same for his own business, and shall continue to pay the rent therefor, but shall have no right to dispose of such good will to any other person; and the rent shall only be raised on application to the mayor and aldermen, who, after hearing the parties, may change and determine the same. And the municipal government of said city shall at all times have power to make and enforce such regulations with regard to said market, and the management thereof, as in their judgment the interests, convenience, health, and safety of the community may require.*

EXHIBIT D.

Filed May 28, 1875. Is not printed in full.

It is House bill No. 1084, 41st Congress, 2d Session, which passed the House of Representatives March 18, 1870, and was in the Senate March 21, 1870, referred to the Committee on Public Buildings and Grounds, and April 4, 1870, reported by M'r Morrill, of Vermont, with amendments, viz.: Strike out the parts in [brackets] and insert the parts printed in *italics*.

It is entitled "An act to incorporate the Washington Market Company."

Section 2 is as follows:

SEC. 2. And be it further enacted, That said company is hereby authorized and empowered to locate and construct a suitable building or buildings upon the following described grounds, namely: commencing at the intersection of the centre line of B street north with the west

line of Seventh street west, running thence north along the west side of Seventh street to the southerly side of Pennsylvania avenue; thence westerly along the southerly side of Pennsylvania avenue to the southerly side of Louisiana avenue; thence westerly along the southerly side of Louisiana avenue to the east side of Ninth street west; thence along the east line of Ninth street to the centre line of B street; thence along the centre line of B street to the place of beginning; and to use and to occupy the same by the erection of a suitable building or buildings for a public market-house including the necessary stalls and sheds, and also for stores, public halls,
32 and such other purposes as may be determined by said company, not inconsistent with its use as a public market. The buildings herein designated to be used for the purposes of a market shall be used for no other purpose inconsistent therewith, but the same shall remain a public market as hereinbefore described. And the said company shall, whenever any part or parts of said buildings, stalls, stands, and so forth, for market purposes are ready for use or occupancy, offer the same for sale at public auction, for one or more years, to the highest bidder or bidders, subject to the payment of an annual rent, the amount of which to be fixed by the mayor and common council of the city of Washington, and the directors of this incorporation, and public notice shall be given of the day of said sale in two or more daily newspapers published in the city of Washington, for two weeks previous to said sale, and by handbills to be posted up in said market-grounds ten days previous thereto; and all subsequent sales and leases thereof shall be made on similar notice and in the same manner; and the said company shall have full power to assess and collect rents for the use of said buildings, stands, stalls, and grounds aforesaid. The stalls, stands, and privileges of all kinds, in said market, to be used for market purposes, when offered at public sale, shall be let to the highest bidder, and there shall be no bidding on the part of said company, directly or indirectly, but said company, with the consent of the mayor and aldermen of the city of Washington, may fix a minimum rate of bids at such sale; and the person who shall offer the highest price at or beyond such minimum for any such stand, stall, or privilege, shall be entitled to the occupation thereof, and shall be considered as having the good will and the right to retain the possession thereof [for the term for which the sale has been made and the rents are promptly paid; and the rents shall only be raised by consent of the mayor and the common council] *so long as he chooses to occupy the same for his own business and pay the rent therefor; and the rent shall only be raised on application to the mayor and common council, who, after hearing the parties, may change and determine the same: Provided, however,* That such right to the possession of such stands or stalls may be sold and transferred by such purchaser, under regulations to be fixed by the by-laws of said company, and in the case of the death of any such purchaser during the existence of his lease, it shall be disposed of as other personal property; and the municipal government of said city shall at all times have power to make and enforce such [police] regulations with regard to said market and the management thereof as *in their judgment* the [interests,] convenience, health, and safety of the community may require.

EXHIBIT E.

Filed May 28, 1875. Is not printed in full.

It consists of the following newspapers:

I. The Daily Patriot, of Washington, December 21, 1870, containing the following article:

CONFERENCE OF THE MARKET COMMITTEES—AN ARRANGEMENT EFFECTED.

Last evening at 7 o'clock, pursuant to an agreement, the committee appointed by the market dealers held a conference with the building committee of the Market-House Company, for the purpose of
33 effecting an arrangement of existing difficulties. There were present of the market dealers George W. Emerson, C. F. E. Richardson, B. S. Elliott, George M. Oyster, B. F. Hunt, and C. Fearson; of the Market Company, A. R. Shepard, N. G. Ordway, W. E. Chandler, Henry S. Davis, S. S. Smoot, T. C. Connolly, and Adolf Cluss.

Col. Smoot called the meeting to order, and M'r A. R. Shepherd was appointed chairman, who briefly expressed the object of the meeting, and stated that the Market Company were disposed to do all in their power to harmonize all interests which might appear conflicting.

M'r Emerson stated that the committee had been delegated to confer with the committee of the Market House Company for the purpose of ascertaining what the latter intended to do in the way of providing accommodation for the market dealers and upon what terms.

M'r Oyster said that the proposition which would meet the approbation of the market dealers was, that the company should build sheds along the frontage of the avenue and Seventh street on the site of the old buildings, giving to each dealer his relative position in the new building as he occupied in the old, as nearly as possible.

After some desultory conversation upon this proposition the building committee retired for consultation. On their return they made a proposition to erect sheds upon the old site along the frontage of the avenue, from Seventh to Eighth street, thence down Eighth street 350 feet, to accommodate the dealers who formerly had stalls on Ninth street, as the company intend to commence the building of the Ninth-street wing at once.

This proposition was agreed to by the market dealers.

Colonel Smoot offered the following resolution, which was adopted:

Resolved, That the temporary market houses shall be constructed and arranged, as nearly as possible, so as to give to butchers and dealers the same positions in relation to each other that they occupied immediately previous to the late conflagration.

Also, a resolution, which was adopted, instructing M'r Cluss to prevent the erection of any more sheds on Market Space, and to remove those now erected when the temporary buildings are ready for occupancy.

M'r Shepherd stated that those parties who took stalls in the permanent building would receive a vested title therein, which they could hand down to their children.

Colonel Ordway said that many seemed to be laboring under a misapprehension that the stock of the company had been gobbled up by outside parties as a speculation. This was not true, for at least seven-eighths of it was owned by bona fide residents of the city.

The question of rent was raised, but nothing definite was decided. After explanations of their former position in regard to the Market Company by several market dealers, the meeting adjourned.

II. The Daily National Republican, of Washington, December 21, 1870, containing the fo lowing article:

THE MARKET DEALERS—THE BLUSTERING BUTCHERS BACK BEFORE OYSTER'S OIL—AN AMICABLE ARRANGEMENT TO BE MADE WITH THE MARKET COMPANY—THE MEETINGS YESTERDAY.

The adjourned meeting of the market dealers was held at Trades Union Hall, yesterday afternoon; M'r B. F. Hunt in the chair, M'r Charles Yeabower, secretary. On taking the chair, M'r Hunt expressed
34 the hope that the meeting would maintain better order and decorum than was displayed at the previous meeting.

M'r George W. Oyster said he came to the meeting disposed to pour oil upon the troubled waters, and with that end in view he would submit a proposition which he considered would

SUIT THE DEALERS BETTER

than anything else which might be suggested at the present time. He moved the appointment of a committee of five to meet a committee of the new Market-House Company at 7 o'clock in the evening; consult together, and learn from them exactly what they intended to do in the premises. He had submitted this motion after a long conversation with M'r A. R. Shepherd, one of the company, who had assured him that the company were anxious and willing to do all in their power to bring about an amicable arrangement.

M'r G. L. Emerson asked whether the action of the committee was to be considered binding on the people, and whether they would agree to abide by the action of the committee.

M'r Elliott suggested that the committee simply confer with the company, and submit a report to a future meeting.

M'r Oyster said it was not his intention to have the committee submit a report at all. He had been assured by M'r Shepherd that arrangements could be made which would be satisfactory to every person who owned a stall. His idea was to insist that all the dealers should have places as near the old ones as possible. The chairman would certainly appoint a committee who would represent the best interest of the market-house people.

The question on the adoption of the resolution was taken by a rising vote, and was adopted—28 to 17.

Some question having risen in regard to the appointment of the committee, M'r Emerson moved to reconsider the vote by which the resolution was adopted, and have the committee elected by the meeting.

M'r Oyster had selected a committee which he thought, while representing the interests of the people, were a set of men who were practical, and could act with the company.

The motion to reconsider was not agreed to, and the chair appointed as the committee Mess'rs G. W. Emerson, B. F. Hunt, B. S. Elliott, W. H. Fearson, and Geo. M. Oyster.

M'r Geo. W. Miller said that, in accordance with a vote of the meeting of the day before, he and two other gentlemen had been appointed a building committee, and instructed to make

IMMEDIATE PREPARATION FOR BUILDING

their own stalls. The resolution of M'r Oyster, of course, done away with the work of the committee, and it looked to him as though they had been made fools of. He would be the last one to ask any favor from the company, as he had left that market forever.

M'r EGGLESTON. That's right; we can't feed any one who goes back there.

M'r Miller, from the building committee, reported that they had visited the grounds, had them surveyed, and asked for proposals for erecting a building 400 by 80 feet.

The report of the committee was laid on the table, and they were discharged.

A LITTLE "GRAB GAME."

M'r Brooks said that there was a little "grab game" going on,
35 and M'r Seitz and others had something to do with it. He agreed with M'r Oyster that the company should build the sheds, as they had possession of the grounds. After they have been built, let the dealers draw lots for them; not do as Mess'rs Seitz, Hoover, Homiller, and others—go and select sites for their stalls before any others had a show.

"Bub" Eggleston moved that the building committee be instructed to take possession of the grounds, and proceed at once with the work of building. Lost.

M'r Elliott said that he had been assured by reliable members of the company that sufficient accommodations would be provided for all who had stalls, without further expense. He had advised all the market people to accept the situation and make the best of it, now that the company had them in their hand.

"Bub" EGGLESTON. "Yes, and they'll treat you badly too."

M'r Elliott said they should make the best bargain they could, and if they could not get what was right, fair, and just, they could leave.

M'r Frere said that money had been collected to employ an attorney. He wanted to know whether one had been consulted, and what his opinions were.

M'r Oyster was proceeding to explain a conversation had with several gentlemen on the subject, when

M'r Frere inquired whether it was the opinion of the attorney that they should build or not.

M'r Oyster said that it was for the interest and good of all parties to accept the proposition of the market company. They would proceed at once to erect suitable buildings, and each man would be located very near his former place.

On motion, a vote of thanks was tendered the building committee.

M'r Geo. W. Miller thought that it was all right to return thanks, but he had been informed that some of the very men who attended the meeting the day before had gone immediately and put their names down for stalls. He was one of the committee appointed to

SELECT A LAWYER,

but after hearing these facts did not think it necessary to spend a dollar on a "lost cause."

"Bub" Eggleston moved that the money subscribed to the lawyer fund be returned. Adopted.

M'r Oyster, the treasurer, said he was ready to refund, and called the name of M'r Eggleston. That gentlemen walked to the table, received his $5, and immediately tore it into about fifty pieces and threw it on the floor. This conduct he explained by saying that, as he had made the motion, the dealers might think he had done so for his $5. The balance of the money was refunded.

M'r Elliott offered the following:

Resolved, That this meeting repudiate and rescind any resolution or action of yesterday, reflecting unjustly upon the Centre Market-House Company, in relation to the burning of said market-house.

In advocating the adoption of the resolution, M'r Elliott said that in reading the reports of the meeting, he felt convinced that unjust reflections had been cast, and as the gentlemen of the company were men of standing and position in the community, he thought it but right to pass such a resolution.

The report of the proceedings in one of the papers was then read, and a majority of those present, failing to see any reflections on that company in it, the resolution was laid on the table.

36 "Bub" Eggleston then gave a characteristic statement of the difficulty which had occurred between him and M'r H. S. Davis, and the meeting adjourned.

THE MEETING LAST NIGHT.

According to agreement the committee representing the market-house company and the dealers met at the board of trade rooms at 7 o'clock. Present on the part of the company, A. R. Shepherd, Col. Sam. S. Smoot, H. S. Davis, N. G. Ordway, T. C. Connolly, W. E. Chandler, and Adolph Cluss, also M'r Job W. Angus. The dealers were represented by Geo. W. Emerson, B. F. Hunt, George M. Oyster, W. H. Fearson, B. S. Elliott, and C. F. E. Richardson. The meeting was called to order by Col. Smoot; A. R. Shepherd was chosen chairman, and Adolph Cluss secretary.

M'r Oyster, on behalf of the market dealers, stated that they desired, if it could be done without interfering with the progress of the building, to have temporary accommodations erected for them, so that each man shall have about his old position in the market.

M'r Ordway said it was a question whether it would not be better for the market men to put up with some little inconvenience for the present, in order that they might have better accommodation in the future.

M'r Oyster thought M'r Ordway was "begging the question." He did not propose to answer any question looking to the event of the building of the market.

M'r Chandler explained that the resolution of Congress, appointing a commission, required the company to erect the market portions of the new buildings at the earliest possible moment.

M'r Davis said that the buildings they proposed to erect would not cover the entire space of the old buildings, but it would be smaller. The butchers to have about the same places they now occupy, and the other dealers to be well provided for.

The members of the market-house company then withdrew for consultation, and after some time returned and submitted the plans for the temporary structure they intended to erect. After some changes suggested by the market-men, it was agreed that the temporary buildings should be as follows: Along the line of the old market, from Seventh to Ninth street, a building fifty feet wide, with four rows of stalls and sheds on the outside for the small dealers; down Eighth street, a building of the

same width and 350 feet deep, both structures to be well lighted and ventilated, and contain, altogether, 360 stalls.

On motion of Col. Smoot, it was

Resolved, That temporary market-houses shall be constructed and arranged, as nearly as possible, so as to give the butchers and dealers the same positions in relation to each other that they occupied immediately previous to the late conflagration.

M'r Shepherd said it was the desire of the company to conform as far as possible with the wishes of the dealers, and he would ask that a committee be appointed, or the same committee be continued, to act with them during the progress of the building.

Some questions having been asked and objections raised by the dealers against the "squatters," who have erected little sheds on the avenue,

On motion of Col. Smoot, it was

Resolved, That the building committee be required to remove all sheds along the line of the avenue, recently put up by the market people, as soon as the temporary sheds are ready to accommodate them, and
37 no further sheds shall be erected or completed in front of the temporary sheds to be built by the Washington Market Company, along the line of the old building.

M'r Ordway incidentally referred to the fact, that at the meeting of dealers there had been some pretty harsh statements and insinuations made about the stockholders and members of the company. This, he was sure, was the result of a misapprehension, and he wished, in order to set the matter right, to state that the interests of the stockholders and dealers were identical, as seven-eighths of the stock was owned by persons who live in and are property-owners in the city.

M'r B. F. Hunt said that when people understood how the matter was, they would not blame the market-men so much. They had paid large sums for the right to occupy their stalls, and of course felt very sore and excited when they had lost them.

M'r Shepherd explained that it was the intention of the company to give them vested rights in the stalls of the new market-house, which would then belong to them for all time to come.

After some further explanations, which were conducted in a very friendly spirit, the meeting adjourned.

THE SHEDS TO BE BUILT.

Immediately after the adjournment of the joint meeting, the building committee of the market-house company held a meeting and appointed Mess'rs H. S. Davis and Adolph Cluss a committee to superintend the erection of the sheds, the work of which will be commenced immediately.

Summons to answer amended bill.—Issued May 28, 1875.

In the supreme court of the District of Columbia, May 28, 1875.

JA'S A. HOFFMAN ET AL., COMPLAINANT,
against
WASHINGTON MARKET CO., DEFENDANT. } No. . Equity docket.

The President of the United States to the Washington Market Company, defendant:

You are hereby commanded to appear in this court at its first special term, occurring twenty days after service of this subpœna, and answer

the exigency of the amended bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*, &c.,
By L. P. WILLIAMS,
Assistant Clerk.

Spa. to ans. amended bill.

JA'S A. HOFFMAN
vs.
THE WASHINGTON MARKET CO. } No. 3797. Equity docket.

Issued May 28, 1875.
Returned May 31, 1875.

Marshal's return.

Summ. and serve notice for injt. on W'm Birney, att'y for the def'ts. May 31st, 1875.

A. SHARP, *Marshal.*

Restraining order.

An amended bill praying an injunction to restrain defendants from selling the stalls of complainants in the Washington Market is this day filed under stipulation. Hearing is fixed for 1875, at 11 o'clock m.

Until further order you are hereby restrained as prayed and stipulated.

By order of the court.

A. WYLIE, *Justice*, &c.

Attest:

R. J. MEIGS, *Clerk*, &c.,
By L. P. WILLIAMS,
Ass't Clerk, &c.

Service acknowledged this the 31st May, 1875.

W. BIRNEY, *Att'y for Def't.*

38 *Answer to amended bill.—Filed July 9, 1875.*

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN AND OTHERS, COMPLAINANTS,
vs.
THE WASHINGTON MARKET COMPANY, DEFENDANT. } No. 3797. Equity docket, 13.

1. The defendant admits the making of the stipulation, a copy of which is annexed to the amended bill and marked "Exhibit A," under and by virtue of which the several complainants named in said bill are thereby made parties plaintiff in this cause.

2. The defendant has no reason to doubt that all said plaintiffs are residents of the District of Columbia, and engaged as market dealers, doing business in the Centre or Washington Market.

3. The defendant admits that it is a corporation, created such under the act of Congress of May 20, 1870; and avers that it was organized under the 15th section of said act, and that its stockholders formally completed its organization November 5, 1870.

39 4. The defendant admits that the second section of said act provides substantially as stated in the amended bill; but the defendant refers to the whole of said section contained in Exhibit A, annexed to the original answer, as being material to the issues in this case.

5. The defendant admits that it did in 1872 offer at auction to the highest bidder a large number of stalls and stands in its market-buildings, and that at such sale some of the plaintiffs were the highest bidders for the stalls or stands numbered opposite their respective names, as set forth in the amended bill, and duly paid the amount bid therefor; but as to others of said plaintiffs, the defendant denies that they were the highest bidders, or purchased at such sale the stalls or stands numbered opposite their respective names in said amended bill; but the defendant avers that these last plaintiffs are occupying stalls and stands without having been such purchasers at auction. The defendant also admits that some of the plaintiffs have regularly paid rent for the stalls purchased by them up to the time of filing the original bill in this cause, June 19, 1874, as demanded by said company, without default, but denies that others of said plaintiffs have so paid rent for the stalls occupied by them.

The defendant also avers that all of said plaintiffs, on the day of filing said amended bill, were occupying stalls and stands in the market-buildings of the defendant, and that nearly all of them were then indebted to the defendant for rent or for use and occupation of such stalls, and had and have wholly neglected and refused to pay such indebtedness.

The defendant annexes to this answer a schedule marked "Exhibit one," giving a list of the plaintiffs, and indicating opposite the name of each (1) whether it is admitted or denied that he was the highest bidder and purchased stalls at said auction sale; (2) whether his rent to July 1, 1874, is paid or unpaid, and, if unpaid, the amount due; and (3) the amounts claimed by the defendant to be due for use and occupation between July 1, 1874, and the close of the second quarter of

40 this year, June 30, 1875; in addition to which amounts for use and occupation the defendant also claims other damages from such plaintiffs, not material to be defined in this answer.

6. The defendant denies that the plaintiffs became entitled by virtue of their purchases to hold the stalls or stands as long as they might choose to occupy the same for their own business and pay the rent, notwithstanding the said expiration of said term of years. The defendant admits that the plaintiffs who have been in occupancy of stalls have created a business and a good-will for the same, and that they claim the right to continue to occupy the same for their said business, which right the defendant denies.

7. The defendant admits that it does claim that it has power to offer said stalls for another term of years, and to receive another bonus or premium for the occupation of the same, besides the regular rents, and that it caused said plaintiffs' stalls, and all the other stalls in said market-building, to be advertised for another letting to the highest bidders at auction-sales to be held on the 20th of June, 1874, and also on May 31st, 1875; and the defendant admits that by such proceeding, and the competition of other bidders, the plaintiffs may be deprived of the aforesaid

possession and good-will so as aforesaid created by them, to which the defendant claims the plaintiffs, according to law, had no right after July 1, 1874, except by a repurchase from the defendant.

The defendant claims that it has power to resell the stalls in its market-buildings for another term of years after the expiration of the first term on July 1, 1874, because such is the correct construction of the aforesaid section 2 of the act of May 20, 1870, which could never have contemplated that the value, either as against the company or as against dealers who might desire to enter the market, should be fixed forever by the price paid at a sale for only two years.

41 All sales of stands, without exception, were of the right to occupy for two years from July 1, 1872. This limit as to time was distinctly set forth in the terms of the sale; was publicly and clearly announced at the sale and at each adjournment, and was fully and perfectly understood by all bidders and purchasers; and all dealers, including the plaintiffs, bought and selected their stands with a knowledge that they acquired a right for two years, and no longer.

By the market regulations, all purchasers were required to obtain permits to enter into possession, and were required to sign the market regulations; and the plaintiffs, who purchased at auction, so signed and obtained and accepted their permits. According to the permits, the right of occupancy was for two years from July 1, 1872; and by the market regulations each occupant was bound to quit and deliver up the possession of the stand occupied by him at the expiration of his term. A copy of the permit issued to and accepted by the plaintiffs was annexed to the answer to the original bill, marked Exhibit B. There was also annexed to said original bill a copy of the market regulations, marked Exhibit C, and the agreement and signature of the plaintiff Hoffman, marked Exhibit D, which is the same as the agreement signed by the other plaintiffs who purchased at auction.

The construction placed upon the charter by the market company and by the purchasers at auction, including the plaintiffs, that the stalls and stands were to be sold for a fixed term, and to be resold at auction at the end of the term, was never disputed by any dealer, to the knowledge of the defendant, until after May, 1874, about which time, in point of fact, the plaintiff Hoffman, and other plaintiffs and dealers, applied to Congress to relieve them from the legal effect of their contracts, and for a declaratory act that a purchase for two years should be deemed a purchase forever, subsequent to the failure of which application the original bill in this suit was filed, June 19, 1874, and the present claim of the dealers first enunciated.

42 Dealers who had purchased at auction, when selling and transferring their rights, in accordance with the aforesaid section 2, never sold, or attempted to sell, them for a longer period than until July 1, 1874. Many sales of this character were made, and about thirty-three per cent. of the stalls in the market have, since the original sale at auction, changed hands on this construction of the law.

Many purchasers of stalls, during their two-years' term, abandoned them, not claiming that they had any rights after the two-years' term; and in such cases the company retook possession and resold to other dealers the right of possession for the balance of the two years' term, but never beyond that. The sales from one dealer to another and the abandonments have amounted to about fifty per cent. of all the stalls in the market.

Since the construction now put by the plaintiffs upon section 2 was set up, in June, 1874, some original purchasers who had abandoned their

stalls have returned and dispossessed the parties in possession, generally with a view of speculating therein, and in some cases worthless and irresponsible parties have thus retaken possession.

8. The defendant admits that it proposes to offer for sale the choice of stands in each of several classes of stands.

The defendant states that, with two or three exceptions of stalls of a limited and special character, all sales at the original auction of 1872 were of the first, second, and subsequent choices of the right to occupy stalls and stands of the various classes described in the market regulations; that the company was advised that this was a natural, legal, and unobjectionable mode of sale, and it was believed to be the only method by which the true value of each stall could be determined, and a combination of a few dealers and speculators to buy the best stalls at nominal prices be prevented. No objection was made to this mode of sale by any dealer.

43 9. The defendant avers that it is entitled to make the aforesaid sale of its stalls at auction, according to the provisions of its charter, and denies that those plaintiffs who purchased stalls at auction for two years have respectively the right to hold the same in perpetuity under said charter; and the defendant denies that the legislative history of various bills introduced into Congress to incorporate a Washington Market Company, or of the bill which became the charter of the defendant, or the language of such bills, or amendments thereto, is as alleged by the plaintiffs in said amended bill; and the defendant further says that such legislative history, whatever it may be, is not competent evidence to determine, or aid in determining, the true construction of the actual charter, and that, in fact, the present stockholders of the defendant company had no knowledge of the same, but examined only the charter after it became a law, and thereupon most of them became subscribers for stock on the books opened for that purpose, at the Interior Department, in accordance with the third section thereof.

10. The defendant denies that the history of the market grounds of the defendant, prior to the grant thereof to the defendant, and of the plaintiffs' possession of stalls thereon, is as stated in the tenth paragraph of the amended bill; and denies that the plaintiffs, or any of them, were in possession as there averred, or that any provision of the defendants' charter was enacted in consideration of any right to such possession on the part of the plaintiffs or any market dealers.

11. The defendant denies that the contemporaneous construction of said act of incorporation was in accordance with the claim of the plaintiffs, or that they, or any other dealers in Centre Market, were officially informed by the duly authorized or any representatives of the defendant, that purchasers at the sale of stalls in said market, under said charter, would obtain a right to occupy in perpetuity the stalls or stands so purchased.

44 On the contrary, the defendant claims that the contemporaneous construction of the charter was in accordance with the present claim of the defendants, as in this answer above set forth, and such construction was never disputed until about the time of filing the original bill in this suit.

The defendant denies that on or about December 20, 1870, as stated in the amended bill, it was declared to the market dealers by M'r Alexander R. Shepherd that they should have vested rights in stalls in the new market-house, which would belong to them for all time to come, or that any such statement in substance was made to the dealers or any

of them, either then or at any time, by any representative of said defendant.

The defendant denies the correctness and accuracy of the newspaper reports annexed to the amended bill, so far as the same purport to represent that any assurances were given to the market dealers sustaining the present claim of the plaintiff, or adverse to the present claim of the defendant.

The defendant further avers that the meeting between market dealers and representatives of the defendant, at which the alleged declaration by M'r Shepherd was made, took place in December, 1870, about the time of the destruction by fire of the old market sheds. The defendant, during that month, in accordance with the requirement of a resolution of Congress of December 20, 1870, replaced the destroyed sheds by new temporary market buildings, which were occupied by the dealers from January 1, 1871, to July 1, 1872, at the end of which time they entered under their purchases at auction in May or June, 1872, into the occupancy of their two-year terms in the permanent market buildings then completed.

These purchases were distinctly for the term of two years only, as in this answer above fully set forth. During the year and one-half of occupancy of the temporary, and nearly two years of occupancy of the permanent market buildings of the defendant, making nearly three and one-half years after the alleged declaration of M'r Shepherd, no claim
45 of a permanent right of occupancy was made by any of the plaintiffs or market dealers.

12. The defendant admits that the second section of its charter provided that the stalls should be sold subject to the payment of an annual rent, the amount of which to be fixed by the mayor and common council of the city of Washington and the directors of this incorporation; but the defendant avers that on the 21st of February, 1871, a law was passed by Congress which amended the said section of said charter by abolishing, on and after the first day of June, 1871, all of the offices of the city of Washington, including those of mayor and common council, without any provision, either special or general, designating any person or persons to succeed said mayor and common council in the duty of joining said directors in fixing such annual rent; that the buildings, stalls, and stands for market purposes were not ready for use and occupancy before July 1, 1872, nor in such condition that the rent could be fixed thereon before April, 1872; at which last-mentioned time the only persons authorized under the charter as thus amended to fix the rent were the directors of this incorporation. Under these circumstances, as the co operation of said mayor and common council had been made impossible by act of Congress, and as said section second provided that the defendant should have "full power to assess and collect rents for the use of said buildings, stands, stalls, and grounds aforesaid," the directors of the defendant company proceeded by vote to fix such annual rentals for the stalls and stands as they deemed reasonable, and the schedule of such rentals was submitted to Henry D. Cooke, governor of the District of Columbia, who investigated and in writing approved and joined in fixing the same. The rentals so fixed were announced to all bidders at the auction sale, and the fact stated that they had been fixed by the directors with the approval and co-operation of the governor.

No objection was made to this method of fixing the rentals by
46 any of the plaintiffs; those who purchased stalls for two years received and accepted permits specifying the rentals so fixed to be paid by them, and entered subject to such rentals; and all the plaint-

iffs who have occupied stalls or stands have continued to pay the rentals so fixed, with full knowledge as to how they had been fixed, for nearly the full term of two years; and the claim that they were not properly fixed was not made by any dealers, nor heard of by the defendant, until after May, 1874, and about the time of filing the original bill herein, when the claim was also first made that the purchases for two years were purchases in perpetuity.

In witness whereof the said corporation defendant has hereunto affixed its common seal this 9th day of July, A. D. 1875.

WASHINGTON MARKET COMPANY,
[CORPORATION SEAL.] By P. S. SMITH, *Clerk.*

W. E. CHANDLER,
WILLIAM BIRNEY,
Solicitors for the Defendant.

I, Preston S. Smith, being duly sworn, depose and say that I am clerk of the Washington Market Company and custodian of its seal, and that I have affixed the common seal of said corporation to the above answer by direction of said corporation.

P. S. SMITH.

Sworn to and subscribed before me this the ninth day of July, A. D. 1875.

R. J. MEIGS, *Clk,*
By R. J. MEIGS, JR.,
Assistant.

47 EXHIBIT ONE.—*Annexed to defendant's answer to amended bill.*

Names of complainants.	Numbers of stalls.	Purchase at auction.	Rent to July 1, 1874.	Due for use and occupation between July 1, 1874, and June 30, 1875.
Anderson, Wm S	436, 437, and 438	Admitted	Paid	$31 50
Acton, John C	582 and ½ of 581	Admitted	Paid	$252 00
Augustifer, Frank J	619 and ½ of 620	Admitted	$168 unpaid, and interest and cost.	$245 00
Auth, Santa	33 and ½ of 32	Admitted	Paid	$245 00
Arnold Theresa	146 and 147	Denied	Paid	$15 00
Bradley, H. J	463 and 466	Denied	Paid	$21 00
Barnes, Theodore	599 and 600	Admitted	Paid	$126 67
Brook, F. I	70 and ½ of 71	Admitted	Paid	$251 00
Bakersmith, Henry	631	Denied	$—— unpaid	$168 00
Bray & Co	174	Denied		
Brooke, Clement H	576 and ½ of 575	Admitted	Paid	$245 00
Brown, s'r, Wm H	99, 128, 129, 130, and house No. 14.	Denied	Paid	$28 00
Brook, Edward	613 and 614	Admitted	Paid	$326 67
Barber, George	632 and 633	Admitted	Paid	$326 67
Beach, H. L	400, 401, and 402	Denied	Paid	$15 75
Betsch, L	Half of Hoffman's stands	Denied	Paid	$210 33
Buscher, J. Henry	541 and ½ of 540	Admitted	Paid	$245 00
Berry, E. A	550	Denied		
Brothers, L. J	5	Denied	Paid	$63 00
Buettner, Henry	211 and ½ of 212	Admitted	Paid	$13 50
Bakersmith, J	655	Admitted	Paid	$163 33
Brenahan, John	½ of 95 and 96	Admitted	Paid	$126 00
Brown, Walter S	612 and ½ of 611	Denied	Paid	$126 00
Barber, L. F	½ of 138 and 139	Admitted	Paid	$245 00
Barnes, Ellen	221 and 222	Denied	Paid	$21 00
Beck, Jacob	206 and 207	Denied	Paid	$7 87
Cissel, Thomas F	542 and ½ of 543	Admitted	$65.12 unpaid	$254 00

EXHIBIT ONE.—Continued.

	Names of occupants.	Numbers of stalls.	Purchase at auction.	Rent to July 1, 1874.	Due for use and occupation between July 1, 1874, and June 30, 1875.
	Crown, James H	178 and 179	Denied	Paid	$157 50
	Cross, James	43, 44, and 45	Admitted	Paid	$245 00
	Cheek, James H	431, 432, and 433	Admitted 431 & 432. Denied 433.	Paid	$84 00
	Coggins, Samuel S	143 and ½ of 144	Admitted	Paid	$253 75
	Coburn, H. C	493 and 494	Denied	Paid	$81 00
	Chandler, Geo. T	235, 236, and 237	Denied		
	Coleman, Geo. W	112 and 113	Admitted	Paid	$15 00
	Coleman & Son, D. E	349, 350, and 351	Denied	Paid	$15 75
	Carll, George	16 and ½ of 17	Admitted	$58 unpaid	$245 00
	Carroll, Joseph G	½ of 56 and 57	Admitted	Paid	$251 00
	Davidson, Wm A	183	Denied	Paid	$81 00
	Dietz, F	649 and ½ of 650	Admitted	Paid	$245 00
	Davidson, John H	646	Denied	Paid	$163 33
	Devote, Anton	79, 80, and 81	Admitted	Paid	$147 00
	Dries, John	337, 340, and 341	Admitted	Paid	$73 50
	Dondero, B	661	Admitted	Paid	$168 00
48	Daly, John M	47 and 48	Denied	Paid	$284 97
	Dillow, F. T	319 and ½ of 320	Admitted	Paid	$118 13
	Dunn, John	119 and ¢ of 120	Admitted	Paid	$42 00
	Donaldson, B. S	382, 383, and 384	Denied	Paid	$36 00
	Dix, Wm	316	Denied	Paid	$40 50
	Donaldson, T. G	232 and ½ of 233	Admitted	Paid	$70 88
	Emerson, Orlando	109, 110, and 111	Denied	$252 unpaid	$490 00
	Ebert, John	½ of 558 and 559	Admitted	Paid	$245 00
	Engle, C	625, 626, and 627	Admitted	Paid	$245 00
	Elliott, B. S	106 and 107	Admitted	Paid	$326 67
	Eagleston, John	651 and ½ of 650	Admitted	Paid	$245 00
	Eichorn, Rudolph	151, 152, and 153	151 and 152 admitted. 153 denied.	Paid	$172 00
	Etchison, King	616	Denied	Paid	$169 15
	Ebel, Charles	637 and ½ of 638	Admitted	Paid	$233 33
	Emmert, George	213 and ½ of 212	Admitted	Paid	$13 50
	Fearson, J. C	181 and 182	Admitted	Paid	
	Fitzpatrick, James	493	Denied	Paid	$6 75
	Fry, James H	498 (218 and 219)	498 admitted. 218 and 219 denied.	Paid	$6 75
	Faunce, C	283, 284, and 285	Denied	Paid	$123 00
	Faunce & Son, J. D	239, 240, and 288	Denied	Paid	$72 00
	Fearson, C. D	321, ½ of 320, 347, and 348	Admitted	Paid	
	Frank, Jacob	496 and 497	Admitted	Paid	$81 00
	Gheen, B. W	19, 20, and 21	Admitted	Paid	$502 00
	Goebel, J. G	598	Admitted	Paid	$169 33
	Gruenapple, F	467, 468, and 469	Admitted	Paid	$155 25
	Geier, Bernard	54 and ½ of 53	Admitted	Paid	$195 00
	Glick & Son, J. H	36 and ½ of 35	Admitted	Paid	$245 00
	Goetzinger, John	475 and ½ of 476	Admitted	Paid	$157 50
	Gheen, Enos W	67 and ½ of 68	Denied	Paid	$245 00
	Gummel Edward	530 and ½ of 531	Admitted	Paid	$245 00
	Golly, Ben	259, 260, and 261	Denied	Paid	$78 75
	Geier, Joseph	31 and ½ of 32	Admitted	Paid	$245 00
	Gaigler, John	214	Admitted	Paid	$0 00
	Gotthardt, George	88	Admitted	Paid	$98 00
	Hoffman, James A	634, 635, and 636	Admitted	$664 80 due	$256 67
	Homiller, M. H	103, 104, and 105	Admitted	Paid	$500 75
	Hammond, John	403, 404, and 405	Admitted	$61 unpaid	$183 75
	Hant, B. F	566, 567, and 568	Admitted	$25 unpaid	$476 00
	Hoover, Wm H	122 and ½ of 123	Denied	Paid	$98 00
	Howard, Frank	529	Admitted	Paid	$163 33
	Hoover, S. S	52 and ½ of 53	Denied	Paid	$250 83
	Holmead, Wm	231 and ½ of 230	Denied	Paid	$89 38
	Hoover & Bro., John A	92, 93 and ½ of 92	Admitted	Paid	$408 33
	Herwig, Peter F	137 and ½ of 138	Admitted	Paid	$245 00
	Holstein, A. H. F	664 and 665	665 admitted. 664 denied.	Paid	$58 00
	Hall, G. L	415, 416, and 417	Admitted	Paid	$31 50
	Heitmueller, Louis	445	Admitted	Paid	$15 75
	Hough, W. W	486	Admitted	Paid	$6 75
	Huhn, Mrs J	65	Denied	Paid	$188 33
	Heine, Wm	412, 413, 414	Admitted	Paid	$15 75
	Hawes, Chas W	421, 422, and 423	Denied		
	Hass, Fred	383	Admitted	Paid	$163 33
	Hughes, Rebecca	208	Admitted	Paid	$21 00

EXHIBIT ONE—Continued.

	Names of complainants.	Numbers of stalls.	Purchase at auction.	Rent to July 1, 1874.	Date for use and occupation between July 1, 1874, and June 30, 1875.
	Hess, Valentine	364 and 365	Admitted	Paid	$31 50
	Homiller, Cha's	89 and 90	Admitted	Paid	$826 67
	Harrington, Dennis	270	Admitted	Paid	
	Jenkins, T. T	253, 254, 255	Denied	Paid	$31 50
	Jaiser, W'm T	½ of 476 and 477	Admitted	Paid	$157 50
	Johnson, C. H	656 and 657	Admitted	Paid	$826 67
	Kengla, L. C	73 and ½ of 74	Admitted	Paid	$59 80
	Kengla, Jos. F	525 and 526	Admitted	Paid	$826 67
	King, R. F	271, 272, 273, 274, 275, and 276	Admitted	Due $162	$110 25
	Kaiser, John	533 and 534	Admitted	Paid	$60 00
	Kehl, John	577	Admitted	Paid	$163 33
	Krause, Henry	603 and ½ of 602	Admitted	Paid	$245 00
	Kieney, Christ	574 and ½ of 575	Admitted	Paid	$245 00
	Kuhlman, Cha's F	290 and 291	Denied	Paid	$122 50
	Krafft, Geo. S	161 and 162	Admitted	Paid	$59 40
	Kengla, W'm T	39 and ½ of 38	Admitted	Paid	$247 00
49	Kahlert, F. W	½ of 191 and 192, (49 and ½ of 50).	191 & 192 admitted, 49 and ½ of 50 denied.	Paid	$27 00
	Killian, L. G	69 and ½ of 68	Admitted	Paid	$245 00
	Kahlert, G	157 and 158	Denied	Paid	$28 00
	Kengla, Jacob H	610 and ½ of 611	Denied	Paid	$107 50
	Kelley, John R	628, 629, and 630	Admitted	$442 unpaid	$504 00
	Kern, George	½ of 362 and 363	Admitted	Paid	$15 75
	Kramer, Andrew	½ of 120 and 121	Denied	Paid	$245 00
	Kaiser, Justus	662	Admitted	Paid	$14 00
	Lightfoot, J. J	578 and 579	Admitted	Paid	$326 67
	Lancaster, E. F	532 and ½ of 531	Admitted	$58 80 unpaid	$245 00
	Linkins, W'm	617 and 618	Admitted	$96 unpaid	$326 67
	Lavender & Son, Jas	301, 302, and 303	Admitted	Paid	
	Lauer, George	100 and 101	Admitted	Paid	$306 67
	Limerick & Bro., Jas	217 and 220	217 admitted, 220 denied.	Paid	$10 50
	La Fontain, James	367, 368, 369, 380, and 381	367, 368, and 669 admitted, 380 and 381 denied.	$217 unpaid	$333 00
	Lavender, j'r., M'r's Ja's	244 and 245	Admitted	Paid	$122 50
	Levy, Leopold P	464 and 465	Admitted	Paid	$10 50
	Leis & Roth				
	Merkling, D	28 and 28	Admitted	Paid	$326 67
	Mann, R. C	½ of 638 and 639	Denied	Paid	$262 67
	Murray, A	546 and 547	Admitted	$152 unpaid	$326 67
	Matthews, Henry	342	Denied	Paid	$56 00
	McGee, James	168 and ½ of 167	Denied	Paid	$48 00
	Miller, Jacob	166 and ½ of 167	Admitted	Paid	$15 00
	Miller, W'm	453 and ½ of 452	Admitted	Paid	$13 50
	Miller, Thomas J	15 and ½ of 14	Admitted	$38 unpaid	$252 00
	Mueller & Son, Carl	658, 659, and 660	Admitted	Paid	
	McCauley, Joseph	288 and 331	Denied	Paid	$144 00
	Menke, M	169, 170, and 171	169 & 170 admitted 171 denied.	Paid	$40 50
	Oyster, George M	175, 176, 177, 490, 491, & 492	Admitted	Paid	
	Ockstadt, C	187, 188, and 189	Admitted	Paid	$21 00
	Pfiel, John K	514	Admitted	Paid	$105 00
	Poore, W'm F	563	Admitted	Paid	$163 33
	Pettit, Benj	569 and 570	Admitted	Paid	$15 00
	Pfluger, John J	592 and ½ of 593	Admitted	Paid	$245 00
	Pillsbury, H. P	442 and 443	Admitted	Paid	$10 50
	Rabbitt & Crown	605, 606, 640, 641, and 642	640, 641, & 642 admitted, 605 & 606 denied.	Paid	$496 00
	Ruppert, Anton	75 and ½ of 74	Admitted	Paid	$159 80
	Rasher E	551, 552, and 553	Admitted	Paid	$252 00
	Ruppert, John	580 and ½ of 581	Admitted	Paid	$345 00
	Riley, Samuel	601 and ½ of 602	Admitted	Paid	$258 00
	Ruppert, Gustavus	114 and 115	Denied	Paid	$54 00
	Ruppert, Henry	91 and ½ of 92	Admitted	Paid	$159 80
	Roever, John	268 and 269	Admitted	Paid	$21 00
	Reisinger, John C	645	Admitted	Paid	$84 00
	Reisinger, J. H	3	Admitted	Paid	$42 00
	Schoepler, M'r's A	306	Admitted	Paid	$31 50
	Sheele, A. D	34 and ½ of 35	Admitted	Paid	$245 00

EXHIBIT ONE—Continued.

Names of complainants	Numbers of stalls.	Purchase at auction.	Rent to July 1, 1874.	Due for use and occupation between July 1, 1874, and June 30, 1875.
Smith, Robert	145 and ½ of 144	Denied	Paid	$254 75
Schneider & Bro	37 and ½ of 38	Admitted	Paid	$246 00
Sherwood, Perry	637	Admitted	Paid	$7 00
Stewart, W. Randolph	527 and 528	Admitted	$448 unpaid	$326 67
Stewart, W. E	286 and 287	Denied	36 unpaid	$144 00
Shreeve, J. H. & W. O	394, 395, 396, & house No. 9	Admitted. House No. 9 denied.	Paid	$182 25
Schaefer, C	13 and ½ of 14	Denied	Paid	$245 00
Schroth, Henry	456 and ½ of 455	Admitted	Paid	$40 50
Sacks, E. J	343	Admitted	Paid	$60 75
Schneider, Charles	505 and 506	Admitted	Paid	$28 00
Stubner, August	64	Denied	Paid	$163 33
Schroth, Charles	454 and ½ of 455, 451 and ½ of 452.	454 & ½ of 455 admitted. 451 & ½ of 452 denied.	Paid	$81 00
50 Schaefer, Charles	535 and 536	Denied	Paid	$30 00
Strauss, A. C	439 and ½ of 440	Admitted	Paid	$91 87
Schwier, Henry	441 and ½ of 440	Admitted	Paid	$91 87
Seitz & Son, Geo	159 and 160	Admitted	Paid	$89 00
Skidmore, James	332, 333, 334, and 335	332 & 333 admitted. 334 & 335 denied.	Paid	$168 00
Tucker, R. A	76, 77, 78, and house No. 4	76 admitted. 77 & 78, & house 4 denied.	$54 unpaid	$445 00
Thompson, R. L	292, 293, 294, and 289	Admitted. 289 denied.	Paid	$21 00
Teuber, Frank	163 and 164	Admitted	Paid	$14 00
Turner, Wm	140, 141, and 142	Admitted	$750 unpaid	$501 75
Toliver, B	480	Denied		
Tompkins, M'r's	354	Denied	Paid	$10 50
Vogbt, Frederick	4	Admitted	Paid	$21 00
Vogbt, John F	507 and 508	Admitted	Paid	$28 00
Varnieff, George	537 and 538	Denied	Paid	$30 00
Whellen, Henry T	571, 572, and 573	Admitted	Paid	$42 00
Whitmore, J. R	½ of 300, and all of 301	Denied	Paid	$10 50
Witmayer, Chris	18 and ½ of 17	Admitted	Paid	$245 00
Wooster & Adams	446, 447, 450, 44, 46, and house No. 10.	Denied	Paid	$576 00
Watson, H. C	499 and ½ of 500	Admitted	Paid	$135 00
Williams, C. J	325, 326, and 327	Denied	Paid	$15 75
White, James	389 and 390	Denied	Paid	$122 50
Wiedman, G. W	1	Admitted	Paid	$60 67
Weaver, M. C	562	Denied	Paid	$163 33
Wheatley, Andrew J	317 and 318	Denied	Paid	$67 50
Wetzel, J. W	315	Denied	Paid	$60 75
Westmeyer, F	66	Admitted	Paid	$163 33
Widmeyer, M'r's John	86 and 87	Denied	Paid	$326 67
Weider, W	457	Admitted	Paid	$15 75
Warthen & Bro., R. C	564 and 565	Denied	Paid	$245 00
Warthen Bro's	½ of 596 and 597	Admitted	Paid	$245 00
Yeabower, Chris	560 and 561	Denied	Paid	$326 67
Yeabower, John	30	Admitted	Paid	$163 33
Zeller, L	539 and ½ of 540	Admitted	Paid	$245 00
			$3,127 72	$30,637 12

Replication to answer to amended bill.

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN
vs.
THE WASHINGTON MARKET CO. } No. 3797. Eq. doc. 13.

The complainants join issue with the defendant upon its answer to the amended bill.

R. T. MERRICK,
R. K. ELLIOT,
For Complainants.

51 *Order to file cross-bill.—Filed July 9, 1875.*

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN
vs.
THE WASHINGTON MARKET COMPANY. } Equity docket 13. No. 3797.

Upon motion of the defendant, by its solicitor, William Birney, this July 9, 1875, and the answer of the defendant being this day filed in open court to the amended bill, leave of the court is hereby given to defendant to file a cross bill in the above cause.

By the court.

Cross-bill.—July 9, 1875.

In the supreme court of the District of Columbia.

THE WASHINGTON MARKET COMPANY
against
JAMES A. HOFFMAN AND OTHERS. } No. 3797. Equity docket 13.

The plaintiff shows—

1. That it is a body politic and corporate, created such under an act of Congress of May 20, 1870; that it was duly organized under the 15th section of said act, and its stockholders formally completed its organization November 5, 1870; and that it is located and does business in Washington in said District.

2. That the defendants to this bill are James A. Hoffman and the other persons named in a schedule marked Exhibit One, hereto annexed; and that they are residents of the District of Columbia, engaged as market dealers, doing business in the market-buildings of the plaintiff, and are also the parties plaintiff to a suit in equity against this plaintiff, now pending in this court and numbered 3797, equity docket 13, commenced June 19, 1874.

3. That the plaintiff, by said act of Congress of May 20, 1870, was granted Centre Market space, so called, on the south side of Pennsylvania and Louisiana avenues in Washington, for ninety-nine years,
52 and was authorized to construct buildings thereon, to be used for a public market and such other purposes as the plaintiff might determine not inconsistent with its use as such market.

4. That by section second of said act it was provided—

(1.) That whenever any part or parts of said buildings, stalls, or stands therein for market purposes should be ready for use or occupancy the plaintiff should offer the same for sale at public auction for one or more years, to the highest bidder or bidders, subject to the payment of an annual rent, to be fixed by the mayor and common council of the city of Washington and the directors of the plaintiff company, of which sale due public notice should be given.

(2.) That all subsequent sales and leases of said stalls or stands should be made on similar notice and in the same manner.

(3.) That the plaintiff should have full power to assess and collect rents for the use of said buildings, stands, stalls, and grounds.

(4.) That the stalls, stands, and privileges of all kinds should be let to the highest bidder, with no bidding on the part of the plaintiff, directly or indirectly, but that the plaintiff, with the consent of the mayor

and aldermen of Washington, might fix a minimum rate of bids at such sale.

(5.) That the person who should offer the highest price at or beyond such minimum for any such stall, stand, or privilege, should be entitled to the occupation thereof and considered as having the good will and the right to retain the possession thereof so long as he chose to occupy the same for his own business and pay the rent therefor; and that the rent should only be raised on application to the mayor and common council, who, after hearing the parties, might change and determine the same.

(6.) That such right to the possession of such stands or stalls might be sold and transferred by such purchaser, under regulations to be fixed by the by-laws of the plaintiff, and that, in case of the death of any such purchaser during the existence of his lease, it should be disposed of as other personal property.

53 5. That in December, 1870, about the time the plaintiff took possession of the grounds granted, the old market-buildings thereon were destroyed by fire. Congress thereupon, December 20, 1870, passed a resolution requiring the plaintiff promptly to furnish temporary market-accommodations for the marketmen who were driven out by the fire, and also to erect, at the earliest possible day, the first stories or market portions of the permanent market-buildings provided for in the act of May 20, 1870. In obedience to this resolution the plaintiff erected commodious wooden sheds on the front grounds sufficient to accommodate all the market dealers, and they were assigned stalls therein, and occupied the same as tenants of the plaintiff, paying the monthly rental assessed and collected by the plaintiff from January 1, 1871, to July 1, 1872, while the plaintiff was constructing and getting ready for occupancy, on the rear of the grounds, the permanent brick market-buildings, in accordance with the act of May 20, 1870.

6. In the spring of 1872, when the permanent market-buildings and the stalls and stands therein were approaching completion, the plaintiff prepared to sell the rights to occupy the same at auction, in accordance with the aforesaid section two, and gave due public notice thereof.

At that time the mayor and common council of Washington had been abolished by act of Congress of February 21, 1871, and the new government of the District established, without any provision, either special or general, designating any person or persons to succeed such mayor and common council in the duty of joining the directors of the plaintiff company in fixing the annual rent to be paid the plaintiff by purchasers who should become occupants of its stalls or stands. The buildings, stalls, and stands were not ready for use or occupancy before July, 1872, and not in such condition before April, 1872, that the rent could be fixed thereon, and at this last-mentioned date the only persons authorized under the charter, as amended by said act of February 21, 1871, to fix the rent, were the directors of this incorporation. Under these circumstances, as the co operation of said mayor and common council had been made impossible by act of Congress, and as said section second provided that the plaintiff should have "full power to assess and collect
54 rents for the use of said buildings, stands, stalls, and grounds aforesaid," the directors of the plaintiff company proceeded by vote to fix such annual rentals for the stalls and stands as they deemed reasonable, and the schedule of such rentals was submitted to Henry D. Cooke, governor of the District of Columbia, who investigated and in writing approved and joined in fixing the same.

The company also determined, there being no mayor and aldermen who

could consent to the fixing of a minimum rate of bids at the sale, to waive their right to have such minimum fixed, and to proceed, starting the sales at the best bids that might be offered.

7. Upon examination of the whole of section two of the charter of May 20, 1870, by the plaintiff and its legal advisers, it was considered that upon the sale, as therein provided, of a stall or stand at auction, for a term of one or more years, the plaintiff would be bound to allow the purchaser to hold possession for the full term for which the sale was made, provided he regularly paid the rent therefor, but that the purchaser would be bound to occupy and retain possession and pay rent only so long as he might choose, from month to month, or quarter to quarter, paying the monthly or quarterly rent as the same might become due. Upon this construction the plaintiff determined to adopt, as the contract with purchasers who might become occupants, a permit to be signed only by the plaintiff, and not an indenture of lease to be signed by and to bind both parties for the term, and such permits were prepared accordingly.

8. The sales commenced on the thirty-first day of May, 1872, and continued from time to time until the rights to occupy about 600 single stalls were disposed of, to between three and four hundred dealers.

All sales of stands, without exception, were of the right to occupy for two years from July 1, 1872. This limit as to time was distinctly set forth in the terms of sale as adopted by the directors of the plaintiff May 23, 1872, was publicly and clearly announced at the sale and at each adjournment, and was fully and perfectly understood by all
55 bidders and purchasers, and all dealers (including all the defendants who bought) purchased and selected stands with a knowledge that they acquired a right for two years and no longer.

By the market regulations, all purchasers were required to obtain permits to enter into possession, and were required to sign, and agreed to comply with, the market regulations; and all the defendants who purchased at auction so signed and obtained and accepted their permits. According to the permits, the right of occupancy was for two years from July 1, 1872, and, by the market regulations, each occupant was bound to quit and deliver up the possession of the stand occupied by him at the expiration of his term. A copy of the permit, issued to and accepted by the defendants, is annexed to this bill, marked Exhibit Two, and there is also annexed a copy of the agreement and signature of the defendant Hoffman to the market regulations, marked Exhibit Three, which is the same as the agreement signed by the other defendants who purchased at auction.

The annual rentals to be paid by purchasers and occupants were announced to all bidders at the auction sale, and the fact stated that they had been fixed by the directors, with the approval and co-operation of the governor of the District, the mayor and common council of Washington having been abolished. No objection was made to this method of fixing the rentals by any of the defendants; the permits accepted by them specified the rentals so fixed; they entered subject to the same, and continued to pay the same, with full knowledge as to how they had been fixed, for nearly the full term of two years.

That the stalls and stands were sold only for a fixed term of two years, and to be resold at auction at the end of the term, and that the rentals were legally and duly fixed, was never disputed by any dealer or defendant, to the knowledge of the plaintiff, until after May, 1874.

9. About June, 1874, the market-dealers for the first time advanced the claim that under their purchases for two years they were entitled to

hold in perpetuity; and they sought to have a bill passed by Congress forbidding a resale at auction. The plaintiff, on the other hand, duly advertised for sale at auction the rights to occupy all the stalls
56 and stands in its market-buildings for the further term of three years, from July 1, 1874, and, on the 20th of June, 1874, was proceeding to sell the same, when a restraining order was served in the aforesaid suit in equity No. 3797 of the defendant Hoffman against this plaintiff, prohibiting the sale of the stalls occupied by the said Hoffman. This restraining order being followed by an injunction on the 9th of July, 1874, and other of the defendants having threatened similar suits in equity, the plaintiff, willing to avoid a multiplicity of suits to test the same claim of right, refrained and has ever since refrained from proceeding with the sale at auction of the rights to occupy any of its stalls or stands.

10. In consequence of the resistance threatened and made by the defendants to the proposed sale by the plaintiff of the rights to occupy the stalls and stands, and for the purpose of testing its rights, the plaintiff, on the 30th of June, 1874, and also on the 1st of July, 1874, notified the defendants to quit and deliver up the stalls and stands which had been occupied by them; and on said first day of July, and while the restraining order was pending, the defendants did quit said stalls and stands, and unconditionally abandoned the same and the market. After the issue of the injunction of the 9th of July, most of them returned and reoccupied the stalls, without right, and the plaintiff did not consent to their return in any other way than by not offering any obstacle thereto, and upon the distinct notice to them from the plaintiff that none of its legal rights as then existing, July ninth, should be affected or considered as waived by its forbearance, but that it should have the same legal rights as if they had not returned, which condition was assented to by them.

11. Immediately after the return of the defendants to the market, as above related, the plaintiff made efforts to secure from them compensation for the use and occupancy of the stalls pending the controversy as to the right of the plaintiff to resell the stalls at auction. As, according to the defendants' own claim of right, they were bound to pay rent as long as they occupied stalls or stands, they were asked to pay for use and occupation a sum equal to the rent previously paid, but after
57 deliberation they informed the plaintiff, through a committee of which the defendant B. S. Elliot was chairman, that they would thus pay for use and occupation during litigation, only on condition that the plaintiff would deduct twenty-five per cent. from the rentals previously paid, open the market at two instead of four o'clock in the morning, and close it absolutely on the three days in the week on which a rival market was held in a new building mainly owned and controlled by the defendants. The plaintiff did not feel willing nor authorized to shut out from its market for half the time occupants of stalls therein who had no stalls in the rival market, and force them to purchase such stalls, and declined to make the concessions demanded; whereupon most of the defendants refused (and still refuse although many times notified) to pay for use and occupation, except on condition that the plaintiff would receive the amounts as rent under the old contract prior to July 1, 1874. This condition the plaintiff deemed it could not assent to without waiving its claim of right then in litigation.

The plaintiff prepared receipts to be given the defendants for sums equal to rent with the following clause added thereto:

"To be accounted for according to the legal rights and obligations

of the payer and the market company as they may be finally determined by the court; in the mean time none of said rights or obligations to be waived or affected by said payment or its reception."

But nearly all the defendants refused to pay on such receipts; a few only have paid thereon, and none of the defendants who have not paid have unconditionally tendered or offered to pay rent since July 1, 1874.

12. Finding it impossible to collect of the defendants compensation for use and occupation by negotiation, the plaintiff attempted legal proceedings. Many actions of assumpsit for use and occupation have been brought, but the defendants resist them on the ground that the rentals were not fixed by the mayor and common council of the city of Washington.

The defendants having been duly notified to quit, proceedings under the landlord and tenant act were brought against many of them to
58 dispossess them; the pleas filed by the tenants in several cases being held by the magistrate to be in effect pleas of title to real estate, and they being thereupon required to give bonds for intervening rent while the cases should be transferred to the supreme court for final determination, the defendants in the remaining cases swore that the magistrate was incapable of doing justice through prejudice and mistaken views of law, and the cases were thereupon removed before a neighboring justice, where the parties defended on the ground that they were not tenants, and that their holding of stalls in the market was an incorporeal hereditament, and that, therefore, the landlord and tenant act was not applicable, which claim the justice appeared to sustain, and dismissed the suits.

13. The plaintiff thereupon again advertised the rights to occupy all the stalls and stands in its market buildings for sale at auction, according to said second section on the 31st day of May, 1875, whereupon an amended bill was, on the 28th day of May, 1875, by consent of the plaintiff, filed in the aforesaid suit in equity No. 3797, originally brought June 19, 1874, in the name of James A. Hoffman alone, by which amended bill the other defendants hereto became parties plaintiff to said bill and joined in the prayers thereof.

14. The plaintiff shows that in said suit in equity No. 3797, the plaintiffs (being the defendants herein) claim to have been the purchasers at auction at the aforesaid sale on the 31st of May, 1872, of the rights to occupy certain stalls or stands in the market buildings of this plaintiff; that they duly paid the bonus therefor, and also the rent therefor until the filing of said original bill, June 19, 1874; that they have the right to remain in occupancy of said stalls or stands as long as they choose, paying the rent therefor, notwithstanding the expiration of said two-years' term; that this plaintiff has no right to resell said stalls as advertised by it, and that the rentals have not been legally fixed; and the plaintiffs therein pray for an injunction against the sale by this plaintiff of said stalls or stands until a final determination of said suit, and for a perpetual injunction restraining and prohibiting such sale, and for
a decree establishing the rights of the plaintiffs therein to retain
59 possession of their stalls or stands as long as they choose without the payment of any additional bonus. Said bill has been answered by this plaintiff denying the claim set up therein, and the suit is still pending in this court and undetermined.

15. The plaintiff further shows that in all the proceedings of the various defendants hereinbefore recited, in resisting the right of the plaintiff to resell the rights to occupy its stalls and stands; in defeating the plaintiff's attempts to collect rent and compensation for use and

occupation, or to dispossess tenants refusing to pay the same; and in prosecuting the aforesaid suit in equity No. 3797, the defendants have been and are acting in concert and combination; and that by written agreement and the formation of an association for that purpose they have assumed the expense of the foregoing and all proceedings concerning the subject-matter of their controversies with the plaintiff, whether they may occur in the name of or for or against all or any one of them, and have employed the same counsel therein.

16. The plaintiff further shows that there is due to it from the defendants as aforesaid, moneys which they neglect or refuse to pay as aforesaid, either as rent of stalls or stands to July 1, 1874, or as compensation at the same rate for use and occupation between July 1, 1874, and June 30, 1875, in the amounts set against their respective names in schedule marked Exhibit One, hereto annexed, the whole amount so due from the defendants being about $35,764.93, and that there is also due to the plaintiff up to said June 30, 1875, from other tenants not defendants hereto, not less than $12,000, the non-collection of which is mainly owing to the controversies now existing between the plaintiff and the defendants.

The plaintiff also avers that many of the defendants are irresponsible, and that it is only possible to collect rents from them by requiring them to pay either quarterly or monthly in advance; that a long delay in collecting will surely result in large losses of rentals and irreparable damage to the plaintiff; and that already by reason of the premises hereinbefore recited the affairs of the plaintiff have become greatly
60 embarrassed, its own indebtedness has remained unpaid, judgments have been rendered against its property which have been with difficulty provided for, loans and mortgages at high rates of interest have been made necessary, and its stock has seriously depreciated in value.

17. The plaintiff further shows that a dismissal of the bill in said suit in equity, No. 3797, will not be a final determination of all the rights of the parties, nor enforce all equities between them, nor leave this plaintiff an adequate legal remedy for the collection of the just sums due it for rents or the use and occupation of its property during the pendency of the litigation, nor for the damages done it by the stoppage of the sale of its stalls and stands by reason of the injunctions procured by the defendants.

At the time of the service of the injunction, June 20, 1874, the prospects were favorable for a sale of rights, which would have proved highly profitable to the plaintiff. The sale for three years would undoubtedly have realized to the plaintiff more bonuses than the previous sale of 1872 for two years, which was about $60,000. At a sale of stalls in the rival Savage-square Market, largely owned and controlled by the defendants, which took place January 4, 1875, the right to occupy in perpetuity, paying the rent therefor, of the highest-priced butcher's stand, sold for $3,350 to the defendant Kelly, while the highest price in 1872 at the market of the plaintiff was $260. The ten highest butcher-stands in the Savage-square Market sold in perpetuity for $24,260, while the ten highest butcher-stands in the plaintiff's market sold for two years for $2,100. For delaying the sale of the rights in the plaintiff's market from favorable until unfavorable times, and until after the completion and sale of stalls in their own rival market, the defendants, in case of a dismissal of their bill against this plaintiff, ought in equity to pay damages; but the plaintiff can have no adequate, if any, remedy at law therefor.

61 In consideration of all which the premises above recited, and forasmuch as for the fixing and enforcing the collection of rents and compensation for the use and occupation of its stalls and stands aforesaid, and for avoiding irreparable loss thereof, the plaintiff can only have adequate relief in a court of equity, where matters of this nature are properly cognizable and relievable; and for avoiding a multiplicity of suits; and to prevent great injustice and heavy pecuniary loss to this plaintiff from the position of the matters in litigation, for which purpose this cross-bill is necessary to protect the admitted rights of this plaintiff, and is filed against parties already before the court and subject to its jurisdiction as parties to the aforesaid suit in equity against this plaintiff; and to the end that in case of the dismissal of the aforesaid bill No. 3797 of these defendants against this plaintiff, there may be such complete and final determination of all matters of controversy between them, and such full relief to all parties as to equity and justice may appertain, the plaintiff prays—

First. That the defendants may be made parties hereto, by proper process, and may make due answer hereto.

Second. That in case of the dismissal of the aforesaid bill in said suit in equity, No. 3797, of these defendants against this plaintiff, this court will by decree in this suit fix the damages to be paid the defendants all and each of them to the plaintiff for the injuries caused by the injunctions issued in said suit in equity No. 3797, and by the consequent stoppage and delay of the sales of the rights to occupy the stalls and stands of the plaintiff as aforesaid, and will order and decree the payment of such damages to the plaintiff; and that in the mean time each of said defendants may be required to give security for such damages as may be so finally adjudged against him.

Third. That this court will by decree establish the right of the plaintiff to recover from these defendants for their use and occupancy
62 of stalls, and from all other occupants of its stalls and stands, the amounts of rentals fixed by the directors of the plaintiff and approved by the governor of the District as aforesaid.

Fourth. That this court will by interlocutory order and decree direct these defendants to pay to the plaintiff, pending the aforesaid suit in equity No. 3797, the amounts severally admitted by the defendants, or clearly proven to have been due on the first day of July, A. D. 1874, by them respectively to the plaintiff, and also the respective amounts due by the said defendants severally for the occupation of their said respective stalls to the first day of July, 1875, at the same rate of compensation as they respectively paid for the same for the year ending 30th June, 1874; and that they, each and every of them, give satisfactory security for the payment of the same compensation for the respective occupation of their said respective stalls for the future, during the pendency of this suit; or, in default thereof, that a receiver be appointed by this court to collect the said rents from said defendants respectively, and also the said compensation since the 1st July, 1874.

Fifth. That the plaintiff may have such other relief as may be equitable and just.

In witness whereof the said corporation plaintiff has caused its common seal to be affixed hereto by Preston S. Smith, its clerk, this 9th day of July, A. D. 1875.

[CORPORATION SEAL.]

W. E. CHANDLER,
WILLIAM BIRNEY,
Solicitors for the Plaintiff.

I, Matthew G. Emery, being duly sworn, depose and say that I am president of the Washington Market Company, the plaintiff; that the seal of said corporation has been affixed by its authority to the above cross-bill by P. S. Smith, its clerk; that I have read the said
63 cross-bill and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

M. G. EMERY.

Sworn to and subscribed before me this 9th day of July, A. D. 1875.
[SEAL.]
R. J. MEIGS,
Clerk of the Supreme Court D. C.

EXHIBIT ONE.—*Annexed to cross-bill.*

Names of defendants.	Numbers of stalls.	Rent to July 1, 1874.	Due for use and occupation between July 1, 1874, and June 30, 1875.
Anderson, Wm S	436, 437, and 438	Paid	$31 50
Acton, John C	582 and ½ of 581	Paid	$252 00
Augustifer, Frank J	619 and ½ of 620	$168 unpaid and interest and cost.	$245 00
Auth, Santa	33 and ½ of of 32	Paid	$245 00
Arnold, Theresa	146 and 147	Paid	$15 00
Bradley, H. J	463 and 466	Paid	$21 00
Barnes, Theodore	599 and 600	Paid	$126 60
Brook, F. I	70 and ½ of 71	Paid	$251 00
Bakersmith, Henry	631	$ —— unpaid.	$168 00
Bray & Co	174.		
Brooke, Clement H	576 and ½ of 575	Paid	$245 00
Brown, Sr, Wm H	90, 128, 129, 130, and house No. 14	Paid	$28 00
Brook, Edward	613 and 614	Paid	$326 67
Barber, George	632 and 633	Paid	$326 67
Beach, H. L	400, 401, and 402	Paid	$15 75
Botsch, L	Half of Hoffman's stands	Paid	$233 33
Buscher, J. Henry	541 and ½ of 540	Paid	$245 00
Berry, E. A	550.		
Brothers, L. J	5	Paid	$63 00
Buettner, Henry	211 and ½ of 212	Paid	$13 50
Bakersmith, J	655	Paid	$163 33
Brenahan, John	½ of 95 and 96	Paid	$126 00
Brown, Walter S	612 and ½ of 611	Paid	$118 00
Barber, L. F	½ of 138 and 139	Paid	$245 00
Barnes, Ellen	221 and 222	Paid	$21 87
Beck, Jacob	206 and 207	Paid	$7 00
Cissel, Thomas F	542 and ½ of 543	$65.12 unpaid	$254 00
Crown, James H	178 and 179	Paid	$157 50
Cross, James	43, 44, and 45	Paid	$245 00
Cheek, James H	431, 432, and 433	Paid	$84 00
Coggins, Samuel S	143 and ½ of 144	Paid	$253 75
Coburn, H. C	493 and 494	Paid	$81 00
Chandler, Geo. T	235, 236, and 237.		
Coleman, Geo. W	112 and 113	Paid	$15 00
Coleman & Son, D. E	349, 350, and 351	Paid	$15 75
Carll, George	16 and ½ of 17	$36 unpaid	$245 00
Carroll, Joseph G	½ of 56 and 57	Paid	$251 00
Davidson, Wm A	183	Paid	$81 00
64 Dietz, F	649 and ½ of 650	Paid	$245 00
Davidson, John H. I	646	Paid	$163 33
Devot's, Anton	79, 80, and 81	Paid	$147 00
Dries, John	337, 340, and 341	Paid	$73 50
Dondero, B	661	Paid	$ 98 00
Daly, John M	47 and 48	Paid	$284 67
Dillow, F. T	119 and ½ of 320	Paid	$118 13
Dunn, John	119 and ½ of 120	Paid	$42 00
Donaldson, B. S	382, 383, and 384	Paid	$36 00

EXHIBIT ONE.—*Annexed to cross-bill.*—Continued.

	Names of defendants.	Numbers of stalls.	Rent to July 1, 1874.	Due for use and occupation between July 1, 1874, and June 30, 1875.
	Dix, W'm	316	Paid	$40 50
	Donaldson, T. G	232 and ½ of 233	Paid	$70 88
	Emerson, Orlando	109, 110, and 111	$252 unpaid	$480 00
	Ebert, John	½ of 558 and 559	Paid	$245 00
	Eagle, C	125, 626, and 627	Paid	$245 00
	Elliott, B. S	106 and 107	Paid	$326 67
	Eagleston, John	651 and ½ of 650	Paid	$245 00
	Eichorn, Rudolph	151, 152, and 153	Paid	$172 00
	Etchison, King	616	Paid	$169 15
	Ebel, Charles	637 and ½ of 638	Paid	$233 33
	Emmert, George	213 and ½ of 212	Paid	$13 50
	Fearson, J. C	181 and 182	Paid	
	Fitzpatrick, James	483	Paid	$6 75
	Fry, James H	498 (218 and 219)	Paid	$6 75
	Faunce, C	283, 284, and 285	Paid	$123 00
	Faunce & Son, J. D	239, 240, and 288	Paid	$72 00
	Fearson, C. D	321, ½ of 320, 347, and 348	Paid	
	Frank, Jacob	496 and 497	Paid	$81 00
	Gheen, B. W	19, 20, and 21	Paid	$302 00
	Goebel, J. G	598	Paid	$169 33
	Gruenapple, F	467, 468, and 469	Paid	$155 25
	Geier, Bernard	54 and ½ of 53	Paid	$193 00
	Glick & Son, J. H	36 and ½ of 35	Paid	$245 00
	Goetzinger, John	475 and ½ of 476	Paid	$157 50
	Gheen, Enos W	67 and ½ of 68	Paid	$245 00
	Gammel, Edward	530 and ½ of 531	Paid	$245 00
	Golly, Ben	259, 260 and 261	Paid	$78 75
	Geier, Joseph	31 and ½ of 32	Paid	$245 00
	Gaigler, John	214	Paid	$9 00
	Gotthardt, George	88	$64.80 due	$98 00
	Hoffman, James A	634, 635, and 636	Paid	$256 67
	Homiller, M. H	103, 104, and 105	$61 unpaid	$300 75
	Hammond, John	403, 404, and 405	$25 unpaid	$183 75
	Hunt, B. F	566, 567, and 568	Paid	$476 00
	Hoover, W'm H	122 and ½ of 123	Paid	$98 00
	Howard, Frank	529	Paid	$163 33
	Hoover, S. S	52 and ½ of 53	Paid	$250 83
	Holmend, W'm	231 and ½ of 230	Paid	$89 38
	Hoover & Bro., John A	82, 93, and ½ of 92	Paid	$408 33
	Hornig, Peter F	137 and ½ of 138	Paid	$245 00
	Holstein, A. H. F	664 and 665	Paid	$358 00
	Hall, G. I	415, 416, and 417	Paid	$31 50
	Heitmueller, Louis	445	Paid	$15 75
	Hough, W. W	486	Paid	$6 75
	Huhn, M'r's J	65	Paid	$68 34
	Heine, W'm	412, 413, 414	Paid	$315 75
	Hawes, Cha's W	421, 422, and 423		
	Hass, Fred	583	Paid	$163 33
	Hughes, Rebecca	208	Paid	$21 00
	Hess, Valentine	364 and 365	Paid	$31 50
	Homiller, Cha's	89 and 90	Paid	$426 67
	Harrington, Dennis	270	Paid	
	Jenkins, T. T	253, 254, 255	Paid	$31 50
	Jaiser, W'm T	½ of 476 and 477	Paid	$157 50
	Johnson, C. H	656 and 657	Paid	$326 67
	Kengla, L. C	73 and ½ of 74	Paid	$159 80
	Kengla, Jos. F	525 and 526	Paid	$326 67
	King, R. F	271, 272, 273, 274, 275, and 276	Due $102	$110 25
	Kaiser, John	533 and 534	Paid	$60 00
	Kehl, John	577	Paid	$163 33
	Krauss, Henry	601 and ½ of 602	Paid	$245 00
	Kieney, Christ	574 and ½ of 575	Paid	$245 00
	Kuhlman, Cha's F	290 and 291	Paid	$122 50
	Krafft, Geo. S	161 and 162	Paid	$50 40
	Kengla, W'm T	39 and ½ of 38	Paid	$247 00
65	Kahlert, F. W	½ of 191 and 192, (49 and ½ of 50)	Paid	$27 00
	Killian, L. G	69 and ½ of 68	Paid	$245 00
	Kahlert, G	157 and 158	Paid	$28 01
	Kengla, Jacob H	60 and ½ of 1161	Paid	$107 50

EXHIB.T ONE—*Annexed to cross-bill*—Continued.

Names of defendants.	Numbers of stalls.	Rent to July 1, 1874.	Due for use and occupation between July 1, 1874, and June 30, 1875.
Kelley, John R	628, 629, and 630	$442 unpaid	$504 00
Kern, George	½ of 362 and 361	Paid	$15 75
Kramer, Andrew	½ of 120 and 121	Paid	$245 00
Kaiser, Justus	602	Paid	$14 00
Lightfoot, J. J	578 and 579	Paid	$326 67
Lancaster, E. P	532 and ½ of 531	$58.80 unpaid	$245 00
Linkins, W'm	617 and 618	$96 unpaid	$326 67
Lavender & Son, Ja's	301, 302, and 303	Paid	
Lauer, George	100 and 101	Paid	$306 67
Limerick & Bro., Ja's	217 and 220	Paid	$10 50
La Fontain, James	367, 368, 369, 380, and 381	$217 unpaid	$333 00
Lavender, jr., Mrs. Jas	244 and 245	Paid	$122 50
Levy, Leopold F	464 and 465	Paid	$10 50
Leis & Roth			
Merbling, D	28 and 29	Paid	$326 67
Mann, R. C	½ of 638 and 639	Paid	$202 67
Murray, A	546 and 547	$132 unpaid	$326 67
Mathews, Henry	342	Paid	$56 00
McGee, James	168 and ½ of 167	Paid	$48 00
Miller, Jacob	166 and ½ of 167	Paid	$15 00
Miller, Wm	453 and ½ of 452	Paid	$13 50
Miller, Thomas J	15 and ½ of 14	$38 unpaid	$252 00
Mueller & Son, Carl	658, 659, and 660	Paid	
McCauley, Joseph	288 and 331	Paid	$144 00
Menke, M	169, 170, and 171	Paid	$40 50
Oyster, George M	175, 176, 177, 490, 491, & 492	Paid	
Ockstadt, C	187, 188, and 189	Paid	$21 00
Pfiel, John K	514	Paid	$105 00
Poore, W'm F	563	Paid	$163 33
Pettit, Benj	569 and 570	Paid	$15 00
Pfleuger, John J	592, and ½ of 593	Paid	$245 00
Pillsbury, H. P	442 and 443	Paid	$10 50
Rabbitt & Crown	605, 606, 640, 641, and 642	Paid	$266 00
Ruppert, Anton	75, and ½ of 74	Paid	$159 80
Rasher, E	551, 552, and 553	Paid	$252 00
Ruppert, John	580, and ½ of 581	Paid	$245 00
Riley, Samuel	601, and ½ of 602	Paid	$238 00
Ruppert, Gustavus	114 and 115	Paid	$54 00
Ruppert, Henry	91, and ½ of 92	Paid	$159 80
Roever, John	268 and 269	Paid	$21 00
Reisinger, John C	645	Paid	$84 00
Reisinger, J. H	3	Paid	$42 00
Schoepler, Mrs. A	306	Paid	$31 50
Sheele, A. D	34, and ½ of 35	Paid	$245 00
Smith, Robert	145, and ½ of 144	Paid	$254 75
Schneider & Bro	37, and ½ of 38	Paid	$246 00
Sherwood, Perry	637	Paid	$7 00
Stewart, W. Randolph	527 and 528	$448 unpaid	$326 67
Stewart, W. E	286 and 287	$36 unpaid	$144 00
Shreeve, J. H. & W. O	394, 395, 396, & house No. 9	Paid	$192 25
Schafer, C	13, and ½ of 14	Paid	$245 00
Schroth, Henry	456, and ½ of 455	Paid	$40 50
Sacks, E. J	343	Paid	$60 75
Schneider, Charles	505 and 506	Paid	$28 00
Steubner, August	64	Paid	$163 33
Schroth, Charles	454 and ½ of 455, 451 and ½ of 452	Paid	$21 00
Schafer, Charles	535 and 536	Paid	$30 00
Strauss, A. C	439, and ½ of 440	Paid	$91 87
Schwier, Henry	441, and ½ of 440	Paid	$91 87
Seitz & Son, Geo	159 and 160	Paid	$60 00
Skidmore, James	332, 333, 334, and 335	Paid	$168 00
Tucker, R. A	76, 77, 78, and house No. 4	$54 unpaid	$445 00
Thompson, R. L	292, 293, 294, and 289	Paid	$21 00
Teuber, Frank	163 and 164	Paid	$14 00
Turner, W'm	140, 141, and 142	$730 unpaid	$501 75
Tolliver, B	480		
Tompkins, Mrs	354	Paid	$10 50
Voght, Frederick	4	Paid	$21 00
Voght, John F	507 and 508	Paid	$28 00
Varnieff, George	537 and 538	Paid	$30 00

EXHIBIT ONE—*Annexed to cross-bill*—Continued.

Names of defendants.	Numbers of stalls.	Rent to July 1, 1874.	Due for use and occupation between July 1, 1874, and June 30, 1875.
Whallen, Henry T	571, 572, and 573	Paid	$42 00
Whitmore, J. R	½ of 590, and all of 591	Paid	$40 50
Widmayer, Chris	18, and ½ of 17	Paid	$245 00
Wooster & Adams	446, 447, 450, 44, 46, and house No. 10	Paid	$576 00
Watson, H. C	499, and ½ of 500	Paid	$125 00
Williams, C. J	325, 326, and 327	Paid	$15 75
White, James	389 and 390	Paid	$322 [illegible]
Wiedman, G. W	1	Paid	$80 67
Weaver, M. C	502	Paid	$163 [illegible]
Wheatley, Andrew J	317 and 318	Paid	$67 [illegible]
Wetzel, J. W	315	Paid	$60 75
Westmayer, F	66	Paid	$163 33
Widmeyer, Mrs. John	86 and 87	Paid	$326 67
Welder, W	457	Paid	$15 75
Warthen & Bro., R. C	564 and 565	Paid	$245 00
Warthen Bros	½ of 596 and 597	Paid	$245 00
Yeabower, Chris	560 and 561	Paid	$326 67
Yeabower, John	30	Paid	$163 33
Zeller, L	539, and ½ of 540	Paid	$245 00
		$3,127 72	$30,637 21

66 EXHIBIT TWO.

Permit. Stand No. .

WASHINGTON MARKET COMPANY.

is hereby entitled to occupy stand No. in the buildings of the Washington Market Company, as a , for the term of two years from July 1st, 1874, paying therefor the quarterly rent, in advance, of dollars, subject to the conditions of the charter and by-laws of the company, and the regulations of the company as from time to time established.

This permit will be of no effect until the holder has signed the regulations and paid all arrearages due the company, and it is transferable only in writing and upon a surrender hereof.

WASHINGTON MARKET COMPANY,
By M. G. EMERY,
President.

Dated , 187 .

EXHIBIT THREE.

Signatures to market regulations.

The undersigned hereby agree to occupy stands or stalls in *in* the buildings and grounds of the Washington Market Company, subject to a full compliance with all laws of Congress and of the District, the charter and by-laws of the company, and the regulations of the company as from time to time established.

(Signed) JAMES A. HOFFMAN.

Summons to answer cross-bill. Issued July 9, 1875.

In the supreme court of the District of Columbia, the 9th day of July, 1875.

Subpœna to answer.

JAMES A. HOFFMAN, COMPLAINANT, *against* THE WASHINGTON MARKET CO., DEFENDANT. } No. 3797. Eq'y dock. 14.

The President of the United States to James A. Hoffman et al., defendant:

You are hereby commanded to appear in this court at the first special term occurring twenty days after service of this subpœna, and answer the exigency of the cross-bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS, *Ass't Clerk.*

MEMORANDUM.—That the defendants herewith served are to enter their appearance in this suit in the clerk's office on or before the day at which this writ is returnable, otherwise the bill may be taken for confessed.

Return.—Issued July 9, 1875. Returned July 26, 1875.

Service acknowledged for James A. Hoffman and other defendants to the cross-bill this 9th day of July, 1875.

R. T. MERRICK,
R. K. ELLIOT,
For Defendants.

67 *Answer to cross-bill.*

In the supreme court of the District of Columbia.

THE WASHINGTON MARKET COMPANY *vs.* JAMES A. HOFFMAN AND OTHERS. } No. 3797. Equity docket 13.

The answer of James A. Hoffman and the other defendants, whose names are set forth in the schedule annexed to the cross-bill of complainant and marked Exhibit one, to the said cross-bill of the Washington Market Company filed against them in this cause.

For answer to said cross-bill, or to so much thereof as they are advised that it is expedient for them to make answer, these defendants say as follows:

1. They admit that the plaintiff is a body politic and corporate, created such under an act of Congress of May 20, 1870, and that it is located and does business in the city of Washington, in the District of Columbia; but these defendants cannot admit that it was duly organized, and they demand proof of such due organization.

2. They admit that they are residents of the District of Columbia and

engaged as market-dealers therein, and are the plaintiffs in a suit numbered 3797 on the equity docket of this court.

3. These defendants refer to the aforesaid act itself to show the power and authority thereby conferred on the plaintiff.

4. For the provisions of said act these defendants pray leave to refer to the act itself.

5. They admit that in December, 1870, the old market buildings on the premises mentioned in the cross-bill were destroyed by fire, and that the plaintiff thereupon erected temporary sheds in which these defendants occupied stalls, as they were compelled to do to prevent their business from being broken up, and in anticipation of the permanent right of occupation which they supposed they were to have in the new buildings then proposed to be erected.

6. They deny that when the new government of the District of Columbia was established under the act of February 21, 1871, there was no provision for the appointment of any person or persons to succeed
68 the mayor and common council of the city of Washington for the purpose of fixing, in conjunction with the directors of the plaintiff, the amount of annual rent to be paid by the purchasers of stalls in the said market buildings; and they deny that, in the month of April, 1872, or at any other time, the plaintiff's directors were the only persons authorized to fix such rent. And these defendants aver that the action of the said directors in fixing such rent was illegal and unauthorized by the plaintiff's charter.

7. They have no knowledge of what passed between the plaintiff and its legal advisers.

8. They deny that the right purchased by them at the sale held in May, 1872, was simply the right to occupy their stands for two years, as alleged by the plaintiff, and they deny that it was so understood by the bidders and purchasers. They deny that the plaintiff was authorized or entitled to make any regulations requiring them to surrender their stalls at the expiration of two years; and such regulations, if any were made, were and are null and void. They deny that they entered or agreed to enter upon the possession of their stalls subject to any such regulations. They deny that they were informed of the manner in which the annual rentals are alleged to have been fixed, or that they consented in any way thereto, or that it was understood that the said stalls were to be resold at auction at the end of two years.

9. They deny that they did not advance their claims to their stalls until June, 1874; but they admit that, in furtherance of what they claimed as their just rights, they sought to have a bill passed by Congress forbidding a resale of said stalls, as threatened by the plaintiff; and said bill was not passed, mainly because Congress was of opinion that no such resale was authorized by the charter of the plaintiff. They say that the plaintiff has twice advertised such resale, and has been prevented from having the same by the action of this court.

10. They admit that in July, 1874, they temporarily abandoned their said stalls, in consequence of the annoyances and persecutions of the plaintiff, and that they subsequently returned and reoccupied the same. But they deny that they reoccupied said stalls without right, or that they assented to any conditions whatever in view of their return and reoccupation, as alleged.

11. They deny that they refused to pay rent for their stalls aforesaid, except upon the conditions set forth in the eleventh paragraph of
69 the cross-bill; and they deny that they have not tendered payment of rent in accordance with their just legal obligations.

12. These defendants admit that they resisted the legal proceedings instituted against them by the plaintiff; but for the defences made by them thereto, they refer to the records in such proceedings, which are now pending on appeal to the common law side of this court.

13. They admit that the plaintiff advertised the said stalls for sale on the 31st day of May, 1875, and that thereupon an amended bill was filed in this cause, wherein all these defendants were made parties.

14. They admit that the allegations of said amended bill, and of the answer thereto, are as stated in the fourteenth paragraph of the cross-bill.

15. They admit that they have acted in concert in the maintenance of what they claim to be their rights in the premises, for as much as the plaintiff's claims and pretensions are equally injurious and disastrous to the rights of each and all the said defendants; and without such concerted action, they would have been wholly unequal to a contest with a wealthy and powerful corporation like that of the plaintiff, and would have been at great disadvantage in the means necessary and proper for conducting the litigation which has been forced upon them by the illegal action of the plaintiff.

16. They deny that they are indebted to the plaintiff for rent of stalls, as alleged by the plaintiff in the sixteenth paragraph of the cross-bill, or to the amount as therein set forth. What may be due from others they know not; and they do not admit that the non-collection of sums claimed to be due from others than these defendants is mainly due to the controversies between the plaintiffs and the defendants.

They deny that many of them are irresponsible, or that it is only possible to collect rents from them by requiring payment monthly or quarterly in advance, or that a long delay in collecting will surely result in large losses or irreparable damage to the plaintiff. If the plaintiff's affairs have become embarrassed, as alleged by it, these defendants aver that such embarrassment is not the result of the action of these defendants, but the result of the misconduct of the plaintiff itself, and of its directors, officers, and agents.

17. They deny that a dismissal of the bill in this cause would not be a final determination of the rights of the parties to said cause, or
70 that it would not enforce all equities now existing between them, or that it would not leave to the plaintiff an adequate legal remedy for the collection of any sums of money justly due to it, if any such there be, from the defendants or any of them, or an adequate legal remedy for any damage which it may have unjustly suffered by the stoppage of the sale of its stalls by reason of the injunctions sued out in this cause.

What the prospects were for a sale of the plaintiff's alleged rights on the 20th day of June, 1874, or what amount might have been realized to it in bonuses, these defendants have no means of ascertaining, and therefore cannot admit without proof the allegations of the plaintiff in that regard. But as they denied, and yet deny, the right of the plaintiff to have any such sale, they likewise deny that the plaintiff could justly or legally have realized any sum whatever therefrom. If the statements of the seventeenth paragraph of the cross-bill be pertinent to the issues in controversy between the plaintiff and these defendants, which they deny, in so far as the same refer to the Savage Square market, they say that the sale of stalls and stands in said Savage Square market was made under circumstances totally different from the sale of stalls and stands in the plaintiff's market, and can afford no just criterion of values whatever for the latter, and no criterion of damages, if any were sustained in the premises by the plaintiff.

They deny the insinuation contained in the said seventeenth paragraph of the cross-bill, that the sale of stalls in the plaintiff's market was purposely and without just cause delayed until the completion of said Savage Square market, and they say that such insinuation is wholly unfounded and unjustifiable. And they say further that the plaintiff has not by such delay unjustly suffered damage; and they deny that for such damage, if any there be, it can have no adequate remedy at law.

They deny that the plaintiff is without adequate and complete remedy at law for the matters and things set up in its cross-bill; and they say that, for each and all of the said matters and things, they are advised and believe that the plaintiff has a full and complete remedy at law, and that it is not entitled to the aid or intervention of a court of equity in respect to any of the said matters and things, and that it is not entitled to the relief prayed for in said cross-bill. And these defend-
71 ants pray to have the same benefit from this answer as though they had specially demurred to the plaintiff's cross-bill.

(Signed) JAMES A. HOFFMAN,
For self and the other defendants hereinafter named.

R. T. MERRICK,
R. K. ELLIOT,
Sol. and Counsel for Defendants.

I do solemnly swear that I have heard read the above answer signed by me, and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

JAMES A. HOFFMAN.

Subscribed and sworn to before me this 14th day of October, 1875.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

Exceptions to answer to cross bill.—Filed Nov. 3, 1875.

In the supreme court of the District of Columbia, sitting in equity.

THE WASHINGTON MARKET COMPANY
vs.
JAMES A. HOFFMAN AND OTHERS. } In eq. No. 3797. Doc. 13.

The complainant prays leave to except to the answer filed to their cross-bill in the above-entitled cause by the said James A. Hoffman.

1. For that in the said cross-bill relief is sought against each and every of the defendants therein named, and for certain ascertained sums of money, in different amounts, from said defendants severally, distinct and separate from each other, and the said answer purports to be the answer of James A. Hoffman and the others defendant, whose names are set forth in the schedule annexed to the cross-bill of complainant, and marked "Exhibit One." And the said answer is signed and sworn to by the said James A. Hoffman alone, and yet purports to be an answer to the claim of complainant against each and every party therein named as defendant; and complainants say they are entitled to an answer under oath from each and every of said defendants.

72 2. For that the said answer is not responsive to the allegations in the 11th paragraph of said bill, but is evasive and insufficient.

3. For that the said answer is not responsive to the allegations in the 16th paragraph of said bill, but is evasive, argumentative, and insufficient.

4. That the said answer purports to be a full answer to all the matters set forth in and the allegations of said bill, whereas, in fact, it is in the parts set forth not responsive to the said bill, and as to other parts is evasive and argumentative, as hereinbefore stated, and yet, without admitting the facts set forth in said bill, it seeks to have the same benefit from the said answer as though they had specially demurred to the plaintiff's bill.

5. For that the said answer is insufficient in other particulars.

JOS. H. BRADLEY,
WILLIAM BIRNEY,
Solicitors for W. M. Co.

Plaintiff's exceptions to defendant's answer to their cross-bill. Clerk will please file.

BRADLEY & BIRNEY,
Sol'rs for W. M. Co.

Filed Nov. 3, 1875.

R. J. MEIGS.

Exceptions sustained.—Filed Dec. 20, 1875.

HOFFMAN
vs.
THE MARKET COMPANY. } December, 1875. Special term.

The exceptions to the answer of defendant Hoffman to the cross-bill coming on to be heard this 20th day of December, 1875, and having been argued by counsel, and being submitted to the court, it is thereupon ordered that said exceptions be sustained, and that said defendant have leave to answer within fifteen days from this date.

By the court.

A. WYLIE,
Justice.

73 *Amended answer to cross bill.—Filed Ja'ry* 17, 1876.

In the supreme court of the District of Columbia.

THE WASHINGTON MARKET CO.
vs.
JAMES A. HOFFMAN ET AL. } No. 3797. Eq. doc. 13. Cross-bill.

The amended answer of James A. Hoffman, one of the defendants, to the cross-bill in the above cause.

This defendant, further answering said cross-bill, in pursuance of the order of court passed herein on the 20th day of December, A. D. 1875, sustaining the exceptions filed by complainant to his original answer, says:

11. That this defendant is and has at all times been ready and willing to pay such rate of rent for the stalls occupied by him as may be just and legal; that from the 1st day of July to the latter part of December, 1874, the complainant made no demand for rent from this defendant, or

any other dealer in the market, who held his stalls by virtue of the provisions of complainant's charter and the decision of this court on the original application for an injunction in this cause; but about the latter part of December, 1874, the complainant, by printed notices served on defendant and other dealers, demanded compensation for use and occupation of said stalls, but not as rent under the original purchase of 1872, and in all cases complainant refused to give receipts for sums of money tendered and offered as rent, but only for use and occupation, whereas prior to July 1st, 1874, all receipts given defendant and other occupants of stalls were unqualified in their terms, and were given and accepted as receipts for rent as such; and in support of this statement defendant refers to the testimony already taken in this cause; and this defendant was advised that he was not bound to pay the amounts claimed excepting upon unqualified receipts for rent as such, and that complainant refused and still refuses to give such receipts.

16. For further answer to 16th paragraph of the cross-bill, this defendant says that he does not owe the complainant the amount claimed in the schedule annexed to said cross-bill, unless it shall finally be adjudged and determined that the amount claimed is a fair, reasonable, and legal rate of rental for the stalls occupied by this defendant.

74 And this defendant having fully answered, according to his understanding of complainant's exceptions to his original answer, prays to be hence dismissed, with his reasonable costs, &c., &c., &c.

JAMES A. HOFFMAN.

I do solemnly swear that I have heard read the foregoing and annexed amended answer, by me subscribed, and know the contents thereof, and that the facts therein stated on my personal knowledge are true, and that those stated on information and belief I believe to be true.

JAMES A. HOFFMAN.

Subscribed and sworn to before me this 15th day of January, A. D 1876.

Filed January 17, 1876.

R. J. MEIGS, *Clerk*,
By L. P. WILLIAMS,
Ass't Clerk.

On the 3d day of January, 1876, separate demurrers and pleas, in the exact form following, were filed, signed by all the defendants (except Hoffman and those against whom the bill was subsequently taken pro confesso), one only of which is printed.

Demurrer.—Filed Ja'y 3, 1876.

In the supreme court of the District of Columbia.

THE WASHINGTON MARKET COMPANY
vs.
JAMES A. HOFFMAN ET AL. } No. 3797. Equity doc. 13.

Demurrer.

B. W. Gheen, one of the defendants to the cross-bill in the above-entitled cause, as to all part of said bill except the 16th paragraph thereof, doth demur, and for cause of demurrer shows:

1st. That the matter and things set out in said part of said cross-bill are not matters of equity cognizance as therein set forth.

2d. That on the allegations in said part of said cross-bill, as therein set forth, the complainant is not entitled to the relief prayed in said cross-bill.

75 3d. That the relief prayed in said cross-bill is not such relief as can be granted by a court of equity.

Wherefore, and for other good causes of demurrer in said portions of said cross-bill contained, this defendant prays judgment whether he shall be compelled to make any further or other answer to such parts of said bill as are demurred to, as aforesaid.

Plea.

And as to the said 16th paragraph of said cross-bill, and the averment therein, the said B. W. Gheen doth plead thereto, and for plea says:

That in and by the charter of the said plaintiff it is provided that the amount of rent to be charged against the purchasers and occupants of stalls or stands in the market buildings of the said complainant is required to be ascertained, fixed, and determined by the mayor and common council of the city of Washington, and the directors of said complainant company, and that said amount has not been so fixed and determined by said mayor and common council, in conjunction with the said directors, as to the stall occupied by this defendant, nor by any authority competent under said charter to fix and determine the same.

Wherefore this defendant prays judgment of this court whether he should be required to make any further answer to said 16th paragraph of said cross-bill.

The undersigned, of counsel for the defendant, certify that the foregoing plea and demurrer are well founded in law.

R. T. MERRICK,
R. K. ELLIOT,
Solicitors and of Counsel.

The defendant, being duly sworn, says that the foregoing demurrer and plea are not interposed for delay, and that as to the plea the same is true in point of fact.

B. W. GHEEN.

Subscribed and sworn to before me this 30th day of December, A. D. 1875.

[SEAL.] E. B. ROBINSON,
Justice of the Peace.

76 *Pro confesso on cross bill.—Filed Ja'y 15, 1876.*

Order to take cross-bill pro confesso as to certain defendants.

List of parties complainant whose demurrers have not been filed.

It appearing to the satisfaction of the court that the complainants, to wit: Arnold, Theresa; Bakersmith, Henry; Beach, H. L.; Brothers, L. J.; Buettner, Henry; Bakersmith, J.; Brenahan, John; Barber, L. F.; Barnes, Ellen; Beck, Jacob; Carll, George; Carroll, Joseph G.; Devote, Anton; Donaldson, B. S.; Dix, W'm; Donaldson, T. G.; Eichorn, Rudolph; Emmert, George; Fearson, J. C.; Fitzpatrick, James;

Faunce, C.; Faunce & Son, J. D.; Fearson, C. D.; Golly, Ben.; Gaigler, John; Hunt, W. F.; Hall, G. I.; Heitmueller, Louis; Hough, W. W.; Huhn, M'r's J.; Heim, W'm; Hawes, Cha's W.; Hess, Valentine; Harrington, Dennis; Jenkins, T. T.; Kaiser, John; Kehl, John; Kuhlman, Cha's F.; Krafft, Geo. S.; Kengla, W'm T.; Kahlert, F. W.; Kahlert, G.; Kern, George; Kramer, Andrew; Kaiser, Justus; Limerick & Bro., Ja's; La Fontain, James; Lavender, j'r, M'r's Ja's; Levy, Leopold F.; McCauley, Joseph; Ockstadt, C.; Rabbitt & Crown; Ruppert, Gustavus; Roover, John; Reisinger, John C.; Schoepler, M'r's A.; Sherwood, Perry; Stewart, W. E.; Shreeve, J. H. & W. O.; Steubner, August; Teuber, Frank; Toliver, B.; Tompkins, M'r's; Voght, John F.; Whallen, Henry F.; Whitmore, J. R.; Widmayer, Chris.; Williams, C. J.; White, James; Wiedman, G. W.; Westmayer, F.; Weider, W.; Warthen Bros., Yeabower, John; have made default in not answering the cross-bill herein filed; it is thereupon, on motion of defendant, ordered that the cross-bill and the matters thereof be, and hereby are, taken for confessed as against said complainants to the original bill.

By the court:

A. WYLIE, *Justice.*

JANUARY 15, 1876.

Motion for rents to be paid into court.—Filed Ja'y 10, 1876.

In the supreme court of the District of Columbia.

THE WASHINGTON MARKET COMPANY *vs.* JAMES A. HOFFMAN AND OTHERS. } Cross-bill. In equity, No. 3797. Eq. doc. 13.

And now comes the plaintiff, by its solicitors, and moves the
77 court for an interlocutory order in said cause, that each of the defendants shall pay into court, within thirty days from the date of such order, the amount or amounts set opposite to the name of such defendant in Exhibit One, annexed to the cross-bill in this cause, with interest from the several dates when said amounts became due and payable to the date of payment; and that each of said defendants shall also, within said thirty days, pay into court compensation for the use of the stalls or stands occupied by him between June 30, 1875, and January 1, 1876, at the rate of the rental paid by him (or by the occupant of the same stalls or stands) prior to June 30, 1874.

And that each of said defendants, continuing to occupy such stalls or stands, shall, on the last day of January, 1876, and on the last day of each month thereafter during the pendency of this suit, pay into court compensation for such month's occupancy, at the rate of the rental aforesaid prior to June 30, 1874.

JOS. H. BRADLEY,
WILLIAM BIRNEY,
BENJ. F. BUTLER,
Solicitors for said Plaintiff Company.

Filed January 10, 1876.

R. J. MEIGS.

Affidavit in support of motion for interlocutory order for the payment of rents during litigation.

I, Preston S. Smith, clerk of the Washington Market Company, de-

pose and say that said company has recovered judgment for rent, or use and occupation, against defendants in the cross-bill filed by said company, on which the amounts due have not been realized on the executions, which in every case have been returned nulla bona, except the ten dollars collected on 12,660, as will appear by the records of said judgments, as follows:

No. 12,653, J. Augustifer, Nov. 5, 1874, $208, with interest.
" 12,654, Henry Bakersmith, Nov. 5, 1874, $108 " "
" 12,659, James Lafontaine, July 8, 1874, $267 " "
" 12,660, William Turner, Nov. 11, 1875, $630 " "
Ten dollars collected.
" 13,061, Orlando Emerson, Nov. 4, 1874, $252 " "
No. 13,062, Joseph Geier, Nov. 4, 1874, $106 " "
78 No. 13,063, J. R. Kelly, Nov. 4, 1874, $378, with interest.
" 13,070, John Hammond, Jan. 6, 1876, $332.75 " "

I also depose and say that I have made demands upon said defendants for payment for use and occupation, up to December 31, 1875, inclusive, with interest on arrears to that date; and that the amount due from said defendants at the time of demand was $49,329.08, principal, and $2,636.08, interest, making $51,965.16 in all (errors and omissions excepted). Since said demand payments have been made by the defendants only to the amount of about $250.00, and it is with difficulty that the receipts of the market are made to pay its ordinary and absolutely necessary current expenses.

PRESTON S. SMITH.

Sworn to and subscribed before me, this the 20th day of January, 1876, the interlineation having been first made between 9th and 11th lines.

Witness my hand and official seal.

[SEAL.]

A. A. BIRNEY,
Notary Public.

Replication to answer to cross bill.—Filed Jan'y 21, 1876.

In the supreme court of the District of Columbia.

THE WASHINGTON MARKET COMPANY, plaintiff, *vs.* JAMES A. HOFFMAN AND OTHERS, DEFENDANTS. } No. 3797. Eq. doc. 13 Cross-bill.

The plaintiff hereby joins issue with the defendant Hoffman upon his answer and amended answer to the cross-bill.

JOS. H. BRADLEY,
WILLIAM BIRNEY,
BENJ. F. BUTLER,
Solicitors for the Plaintiff Company.

Joinder on demurrers.—Filed Jan'y 21, 1876.

In the supreme court of the District of Columbia.

THE WASHINGTON MARKET COMPANY, plaintiff, *vs.* JAMES A. HOFFMAN AND OTHERS, DEFENDANTS. } No. 3797. Eq. doc. 13. Cross-bill.

79 The plaintiff joins in each and every of the demurrers, and takes

issue on each and every of the pleas filed severally by defendants in the cross bill.

JOS. H. BRADLEY,
WILLIAM BIRNEY,
BENJ. F. BUTLER,
Solicitors for the Plaintiff Company.

Motion for pro confesso.—Filed July 21, 1876.

In the supreme court of the District of Columbia.

THE WASHINGTON MARKET COMPANY, plaintiff, *vs.* JAMES A. HOFFMAN AND OTHERS, DEFENDANTS. } No. 3797. Eq. doc., 13 Cross-bill.

It appearing that the defendants who have filed demurrers and plea to the cross-bill in said cause have pleaded only to so much of the sixteenth paragraph thereof as relates to the rent of stalls or stands to July 1st, 1874, and have neither demurred, pleaded, or answered to the averments of said paragraph that there is due to the plaintiff from the defendants compensation for the use and occupation of said stalls and stands between July 1, 1874, and June 30, 1875, in the amounts set against their respective names in schedule marked Exhibit One, annexed to said cross bill, nor to the subsequent averments in said paragraph contained, the plaintiff now moves the court that as to said averments of said 16th paragraph, not demurred, pleaded, nor answered to as aforesaid, the cross-bill may be taken pro confesso as to each and every of said defendants.

JOS. H. BRADLEY,
WILLIAM BIRNEY,
BENJ. F. BUTLER,
Solicitors for the Plaintiff Company.

80 *Testimony-in-chief for plaintiff, taken before T. A. Lambert, esquire, December 21, 1874.*

JAMES A. HOFFMAN.

James A. Hoffman, the complainant, being sworn to testify the truth, the whole truth, and nothing but the truth touching the matter at issue in said cause, the said James A. Hoffman was examined, and he did thereupon depose, testify, and say as follows:

I am a butcher by occupation and reside on Georgetown Heights, and have hertofore occupied and do now occupy stands Nos. 634, 635, and 636 in the Washington Market, since the organization of the company.

Int. When did you become entitled to the stands you now occupy, and have you continuously occupied them from that time to the present?

Ans. I became entitled to the stands July 1, 1872, and have occupied them ever since. I purchased them at auction, paying for them a bonus of $510, I think.

Int. What was the quarterly rent of said stands, and have you paid said quarterly rents regularly since July 1, 1872, down to the time of bringing this suit, viz, June 19, 1874?

Ans. The quarterly rent was $126, with 20 per cent. off if you paid

within ten days after the bill was presented. I have paid the same regularly, down to the time of bringing this suit.

Int. Have you paid the rent since the bringing of this suit?

Ans. I have tendered the rent, and the company has refused to receive it unless I would release them from all obligations that might arise because they took it. They required me to accept a receipt, which I now hand to the commissioner, a copy of which is herewith filed, marked Exhibit A. This I refused to do. I, together with others also, who signed a paper to M'r Merrick, as their attorney, authorized him to make a tender for all of us, and I understood from him that he had made a tender to M'r Chandler, attorney for the market company, for all the dealers he was acting as counsel for, and that M'r Chandler refused to receive it.

Int. Who do you mean by other dealers that employed M'r Merrick?

Ans. I mean all those who signed the paper to M'r Merrick to take care of their interest, and I understood that all their cases or rights were to be determined by my case.

JA'S A. HOFFMAN.

Subscribed and sworn to before me this 31st day of December, A. D. 1874.

T. A. LAMBERT,
Examiner in Chancery.

EXHIBIT A.

$ 1[00.] OFFICE WASHINGTON MARKET COMPANY,
Washington, D. C., , 187 .

Received of , dollars, a sum equal to amount of rent of stall No. , from , to be accounted for according to the legal rights and obligations of the payer and the market company, as they may be finally determined by the court; in the mean time, none of said rights or obligations to be waived or affected by said payment or its reception.

—— ——, *Clerk.*

Test:
T. A. LAMBERT,
Examiner.

81 WEDNESDAY, *April 14th*, 1875—11 o'clock a. m.

Met pursuant to request of defendant's counsel.

Present, M'r R. T. Merrick, counsel for complainant, Gen. W'm Birney, counsel for defendant, and the witness, James A. Hoffman; whereupon the latter was cross-examined by Gen. Birney, as follows:

JAMES A. HOFFMAN:

Q. Please state what you mean when you say that you occupy stands 634, 635, and 636, and explain whether M'r Botch does not occupy one of said stalls and part of another?

A. I mean by that statement that I purchased those stands at the original sale, having let M'r Botch have half of my stand, with the understanding that he was to pay a portion of the rent, these same stands having never been transferred on the books of the company through any knowledge of mine.

Q. Who has paid the rent for the stall and a half occupied by M'r Botch?

A. M'r Botch—that is, I suppose he has.

Q. Did he pay it through you?

A. I paid it for him, to the best of my knowledge, twice. He gave me the money, and I carried it into the office for him.

Q. Did you pay it in M'r Botch's name?

A. Yes, sir; I paid it in M'r Botch's name at the time.

Q. When and how did you pay your bonus?

A. Well, I don't know as I can answer that question without having my receipts here—my notes. It is answered, I think, in my direct examination.

Q. How many notes did you give for the bonus?

A. That I can't answer. I have the notes, and will produce them.

Q. How long after the purchase at auction sale in 1872 did you make these notes?

A. That I'll have to answer by producing the notes. I gave the notes and took them up.

Q. Was it not several months after the purchase before you signed the notes?

A. To the best of my knowledge it was between two and three months, I think, before the first note should have matured. I can tell better when I refresh my recollection by the notes, which are at my house.

Q. Did you or not pay all those notes at maturity?

A. To the best of my recollection, one or two of those notes was paid after maturity. The first was paid at the National Bank of the Republic, and the next I took up, I think, from the company.

Q. To whom did you pay the last two notes, and when?

A. To M'r Hackett, I think. I suppose he was acting as collector for the company. He is an attorney at law. I think some time in June, 1874.

Q. You speak of a deduction of 20 per cent. from the quarterly rent. Do you mean that that deduction is shown in any part of the contract between you and the company?

A. The last rent I paid the company I refused to pay unless they would give me a deduction of twenty per cent., and they received it, as I understood it, in that way, with the 20 per cent. off.

Q. State the time.

A. I think that was in June, 1874, too, as near as I can recollect.

Q. Please produce your receipts taken for payments made to the company.

82 A. I accepted a receipt from M'r Smith, with the understanding that 20 per cent. should be off, provided any one else was allowed it. My receipts are at home, and I will bring them.

(Such part of the answer objected to by General Birney as is not responsive.)

Q. You say in your examination-in-chief that you paid your rent regularly. Please explain if you mean that you paid it promptly, according to the market regulations.

A. I paid it, I think, to the best of my recollection, the first year very regularly, and in the last year I paid it after it became due, not in advance.

Q. Do you mean that you paid it at the end of each quarter?

A. I don't think I did, sir. I think that the last payment I made was in June, 1874. I think at that time I paid two quarters' rent and took up a note of M. A. Crusen's, paying interest, protest, and all, up to date.

Q. Please give the date of each payment made by you to the company for rent of stalls, and the amount.

A. That I can answer better by producing my receipts from the company, which I have at home.

Q. Did you make any payment of rent during the first year in advance, according to the market regulations?

A. I did, sir.

Q. How many?

A. I can only answer by my receipts.

Q. Please state the date and circumstances of any tender of money made by you to the defendant since the bringing of this suit, with the name of the person to whom made.

A. The first tender of money made through my counsel, M'r Merrick, was to M'r Chandler, I believe, being one of the men named on the paper M'r Merrick acted as counsel for. I offered to pay M'r Smith on the 13th of April, on the receipt of a notice from him, providing he would give me a receipt for rent in full to date. My offer was to pay all up to date. He refused to give me a receipt.

Q. Were you present when the tender was made for you by M'r Merrick?

A. I was not.

Q. How much money did you tender through M'r Merrick?

A. The amount due to the date it was tendered, I suppose. That was the direction I gave to M'r Merrick.

Q. Was the money you gave to M'r Merrick in silver, gold, or bank-notes?

A. I directed M'r Merrick to make a tender of what I owed the company up to date, provided they would give him a receipt; and he informed me that he had done so. I gave him no money.

83 Q. What amount did you direct M'r Merrick to tender, and for what period?

A. For what I owed up to the time the tender was made.

Q. At what date was this tender made?

A. I cannot recollect.

Q. Was it or not in the month of June, 1874?

A. No, sir; it was not in June, 1874; it was about the time of the decision of the case by Judge Wylie.

Q. At what date did you make the tender you speak of to M'r Smith, the clerk?

A. On the 13th of April, 1875; I didn't show him any money; I told him I was ready to pay; he declined to receive, giving the receipt I required.

Q. Did you offer to Smith any receipt for his signature?

A. I did not.

Q. Are you a member of any corporation or society conducting a market business in this city?

(Objected to by M'r Merrick.)

A. I am, sir.

Q. What is it?

A. The Northern Liberty Market Company.

Adjourned until Friday, the 16th day of April, to meet at the same place at 7 o'clock p. m.

T. A. LAMBERT,
Examiner.

SATURDAY, *May* 8, 1875.

Met pursuant to adjournment. Present, R. K. Elliott, esq., of counsel for complainant, General W. Birney, of counsel for defendant, and the witness, James A. Hoffman; whereupon the last named was further cross-examined by General Birney, as follows:

James A. Hoffman.

Q. Are you ready now to produce the receipts called for, on previous cross examination, in question 55? If so, produce them.

A. I am, and here produce them; these are all the receipts I could find; I owed the company nothing prior to July, 1874; the protested note of Krusen represents a quarter's rent, which note I paid upon receiving notice of the protest; the receipts dated November 26, 1872, May 6, 1873, and May 22, 1874, were given for rent paid by me.

(Said receipts and note were here filed and are returned herewith, marked Exhibits J. A. H., 1, 2, 3, and 4, respectively; the notes marked Exhibits J. A. H., Nos. 5, 6, and 7, respectively.)

Q. The three notes are the bonus notes, are they not?

A. They are.

Q. And the Krusen note and the three receipts you claim to be payments for rent?

A. The receipts show that themselves; the note shows it also; it was paid to the company for rent; when I purchased my stalls at the sale of 1872 it was required of all purchasers to pay one-fourth of the bonus and one quarter's rent before receiving a permit to occupy the
84 stands which they had purchased; in going into the office to get my permit I drew up a check for one hundred and twenty-six dollars for one quarter's rent; I handed that check to M'r Ordway and asked for my permit, and on that obtained it; I was marked all right on the company's books as being paid up in full for bonus; I wondered at the company not calling on me to get my bonus or to sign the notes; after about four months had elapsed I spoke to several of my friends, and some of them went over to the office and told some of the market employees that I had not paid my bonus; M'r Ordway came to me in the market in a very excited manner and asked me if I had paid any bonus; I replied that I had not; he replied back to me that he did not know how in the name of God they had made such a mistake, as I was marked paid up in full on the books; I thereupon went over to the office with him; those notes were drawn up and signed by me, when I paid them all.

(That part of the answer beginning with the words "when I purchased," &c., objected to by M'r Birney as being irresponsive.)

Q. Were not the bills of the market company for rent usually presented before or at the beginning of the quarter?

(Question objected to as involving the regulations of the company.)

A. I think they were presented at the beginning, if my memory serves me right.

Q. Was your understanding of the rule in regard to the twenty per cent. deduction for prompt payment that that deduction was made if the bills were paid within the ten days after the beginning of the quarter?

(Witness' understanding of the rule is objected to, the rule itself being the best evidence of the fact.)

A. My understanding of the twenty per cent. was that the Market Company in taking twenty per cent. off had not complied with their agreement with the reduction of rents proportionate to the reduction of

the poor fund to them, and thereupon I refused to pay my rent under that stipulation.

Q. Please answer the last question in reference to the ten days, from the beginning of the quarter, without inserting any other matter.

(Objection repeated.)

A. According to the regulations that they had adopted, I suppose it was.

Q. About what time did you employ counsel in this cause?

A. Some time in June, 1874, or May, 1874.

85 Q. Were other persons engaged with you, or interested with you, in the employment of counsel?

(The two last questions objected to. The counsel, M'r Elliot, instructs the witness that he need not answer the last question unless so required by the court.)

A. I follow the instructions of my counsel.

Q. Was it by virtue of any combination among stall-holders in the Centre Market that counsel were employed about the time the bill was filed in this cause?

(Question objected to as calling for matters involved in the relation between client and counsel.)

A. I don't think there was any combination at that time, to the best of my recollection.

Q. Were there not several meetings held among those stall-holders for the purpose of combining to defeat the claims of the Market Company?

(Question objected to as irrelevant to the issue.)

A. I have no recollection of any combination to break the company up before the temporary injunction. We held several market-dealers' meetings previous to that in order to have a committee appointed to treat with the board of directors of the Washington Market Company to settle the difficulties.

Q. Was not B. S. Elliot, one of the market dealers, chosen as chairman of a committee representing the market dealers; if so, was that before or after the injunction?

(Objected to as irrelevant.)

A. I have no recollection of M'r Elliot acting as chairman of any such committee, and no recollection of any such committee; I don't recollect of any committee going there with Elliot as chairman.

Q. Do you recollect M'r Elliot's being a member of a committee appointed by the market dealers?

A. I think that M'r Elliot was a member of the committee that waited on the board of directors; that is, to the best of my recollection.

Q. After the injunction was granted did not the combination of market dealers in this matter appoint a committee to communicate with and instruct counsel?

(Question objected to for the reason that it is vague and indefinite, and because the counsel for the defendant declines to state to what matter he refers.)

A. I believe there was a meeting held after the temporary injunction; I think there was a committee appointed at that
86 meeting, if I am not mistaken, for the purpose to engage counsel to defend our rights against what we considered a gross monopoly.

Q. Was that committee directed to communicate to M'r Merrick the decision of the market dealers as to the terms on which they would consent to pay rent accruing after the 1st day of July, 1874?

(Objected to.)

A. In answer to that question we always considered him intelligent enough to act without instructions.

Q. Did not the market dealers, in a meeting held in the first part of August, 1874, consider this question as to the terms on which they would agree to pay the rents aforesaid?

(Objected to.)

A. It is a very hard matter for me to recollect what the market people have done.

Q. Did not that meeting in August decide that they would not pay rent unless the Market Company would deduct twenty-five per cent. from the face of the bills, open the market-house at 2 o'clock in the morning and shut it up for three days in the week?

(Objected to.)

A. To end this August controversy I will just say here that I have no recollection of ever holding any meeting in August, to the best of my knowledge; we may have done so, though.

Q. Please state whether at any meeting the market dealers determined to instruct their counsel to demand the above terms or similar ones.

(Objected to.)

A. To the best of my recollection I do not remember any such instructions coming from a market-dealers' meeting; the impression may have gotten to the market company through some outside parties in the market.

Q. Was there in August last a committee authorized by the market dealers to act in their behalf in this controversy; if so, was B. S. Elliott a member of that committee?

(Objected to unless the question refers to the suit of Hoffman against the Washington Market Company, now before the court.)

A. There was a committee appointed to attend to our affairs by the market dealers with full power to act for them in Congress; to
87 attend to any matters before that body that might arise between the dealers and the market company; that is the only committee of which I have any recollection.

Q. Did you, or not, see any letter written on behalf of the market dealers to M'r Merrick, counsel in this case, after the granting of the injunction?

(Objected to.)

A. I don't think there ever was a letter written to M'r Merrick by the market dealers; the letter may have been written by one person.

(At the request of M'r Elliott the portion of the cross-examination relating to the letter above spoken of was suspended until M'r Merrick can be present.)

Q. You testified in your examination in chief to a tender through M'r Merrick; did other persons join you in the same kind of tender; if so, how many?

(What unnamed other persons did is objected to.)

A. I think there was a paper drawn up empowering M'r Merrick with a power of attorney to act for them in this case; that paper was taken through market and signed by a large number of dealers, how many I cannot state; those parties all made the tender through M'r Merrick; that paper was to authorize M'r Merrick to make the tender.

Q. About what date was that paper signed?

A. I don't remember the date, but it was shortly after the injunction —Judge Wylie's decision.

Q. Is that paper under your control?

A. Not being M'r Merrick, I am not the custodian of that paper.
Q. Is M'r Merrick the custodian?
A. You will have to ask M'r Merrick; I don't know.
Q. Was it delivered to M'r Merrick?
A. It was; that is, I suppose it was. I think I saw it in his possession.
Q. Can you remember the names signed to that paper?
(Objected to, the paper itself being the best evidence.)
A. I remember mine was on it.
Q. Is there a combination existing among the market dealers for any purposes connected with the differences between the market dealers and the company; if so, what is its name?
(Objected to, unless the question refers to this case.)
A. There is an association known as the Market Dealers' Protective Association, to protect their interest wherever that interest may arise. Being poor people we deemed it expedient to form this association; that we would be better able to protect ourselves in a body than a single individual would.
88 Q. Are you a member of it?
A. I am.
Q. Does that association aid you in part to pay the expenses incident to this suit?
(Objected to as irrelevant and impertinent.)
A. The market dealers, or those who have signed M'r Merrick's paper, will defray the expenses of this suit.
Q. About how many members are there?
(Objected to as above.)
A. I do not know.
Q. Are there a good many market dealers in it?
A. There is.
Q. Does that association have for one of its objects to provide by contribution for the expenses incident to all suits of any kind growing out of the controversy between the dealers and the company?
(Objected to as above.)
A. It is a protective association, and consequently will protect the interests of its members wherever that interest may arise. Of course it will provide for those expenses and others too.

The cross-examination is here closed, subject to the inquiry about the letter of B. S. Elliot and subject to redirect examination, and the commission adjourns until Monday, May 10, 1875, at 11 o'clock a. m., to meet at the same place.

T. A. LAMBERT,
Examiner.

MONDAY, *May* 10, 1875.

Met pursuant to adjournment. Present, Mess'rs Merrick and Elliot, counsel in behalf of complainant, and General Birney, of counsel for the defendant, and the witness, James A. Hoffman, whose redirect examination was thereupon commenced as follows:

Before proceeding with the redirect examination M'r Hoffman desired to make a correction in regard to an answer given by him in his cross-examination: "I do not wish it to be inferred that there has been any combination among the market dealers since the injunction was granted or at any other time to break up the Market Company.")

Redirect:

Q. You have been asked on your cross examination in reference to whether there were or were not terms proposed by the market dealers since the injunction in this case upon which they were willing to pay rent, and what those terms were; have not you, and have not the other dealers acting with you for the protection of their rights, been, all the time since this case was brought, ready to pay rent to the company under their purchase of stalls in 1872, and has it not been made known to you and among the market dealers generally, that the company would not so receive rent, and would only take pay for use and occupation, giving a special receipt therefor?

(Objected to as leading and argumentative.)

A. We have always been ready to pay our rent under the receipt that we received, and I have never heard, to the best of my knowledge, any single man express himself otherwise, if the company would give him the former receipt that we used to receive; it has generally been made known to us that the Market Company would not receive rent from us except for use and occupation and granting us a special receipt therefor, and we have tendered the rent several times.

Adjourned to meet on Tuesday, May 11, 1875, at 7 o'clock p. m., to meet at the same place.

T. A. LAMBERT,
Examiner.

89 James A. Hoffman:

The redirect testimony of the complainant, James A. Hoffman, was here resumed by M'r Merrick:

Q. How long has there been a public market at the place where the Washington Market Company is now located?

A. That dates back beyond my recollection. The market was there before I was born; I am thirty years old.

Q. How long have you occupied a stand in any market on those grounds?

A. About eleven years, I think, sir.

Q. How did you acquire your right in the first instance to occupy a stand there?

A. By purchasing M'r Thomas Weaver's right.

(Question objected to by M'r Chandler as irrelevant.)

Q. What did you pay Thomas Weaver?

A. $2,500.

Q. How did Thomas Weaver get his right, if you know?

A. He was his brother David's successor.

Q. How did David get his right?

A. I don't know, sir, how he came by it, whether he purchased from the corporation, or whether he succeeded some other person who had purchased from the corporation.

Q. Was there any writing between you and Weaver at the time of the purchase by you?

(Objected to.)

A. His right was transferred to me by the corporation authorities of Washington, that is, to the firm of Hoffman & Hunt.

Q. Down to what particular time did you occupy the stand purchased by you from Weaver?

A. I occupied the stands to the Saturday previous to the fire in December, 1870.

Q. What fire?

A. The fire that burnt the Centre Market-House.

Q. In your answer you speak of stands; how many did you or your firm purchase of Weaver?

A. We purchased two adjoining stands known as double stalls.

Q. What was their size actually, and what was their size relatively, to the stands in the present market-house?

A. I think they were, as well as I can recollect, about ten feet each, making twenty. I think there were stalls in that market of nine feet; I think there were none less than nine; I think they were about nine feet deep; that is, mine were. My present stand is eight feet deep and six feet front.

Q. After your purchase from Weaver, what license or rent did you pay, and to whom?

A. We paid $100 on each stall—$200—a year to the corporation of Washington for license and rent combined.

Q. State exactly how the transfer was made from Weaver to you, or how from the corporation to you of Weaver's right?

A. It was by an order of Weaver to transfer his license to me written on the back of his license, which the market-master took and had transferred to Hoffman & Hunt, and when that license run out with the expiration of the year the corporation issued a license to the firm
90 for another year. I will search, and if I can procure a copy of the original I will produce it and file it.

JAMES A. HOFFMAN.

Subscribed before me this 11th day of May, A. D. 1875.

T. A. LAMBERT,
Examiner.

EXHIBIT J. A. H., 1.

$120.] WASHINGTON, D. C., *September* 15, 1873.

Sixty days after date I promise to pay to James A. Hoffman, or order, one hundred and twenty dollars, value received, with interest until paid at the rate of eight (8) per cent. per annum, payable at the National Metropolitan Bank.

W. A. KRUSEN.

Residence, cor. 14th and P.
(Protest of note not printed.)

J. A. H., 2.

OFFICE WASHINGTON MARKET COMPANY,
Washington, D. C., May 6, 1873.

Received from J. A. Hoffman, on stands No. 634, 635, 636, one hundred twenty-six dollars, for one quarter rent, from January 1st, 1873.
$126. P. S. SMITH, *Clerk.*

J. A. H., 3.

WASHINGTON, D. C., *November* 26, 1872.

Received from J. A. Hoffman one hundred twenty-six dollars, one quarter rent, from October 1st, 1872, stands 634, 635, and 636.
$126. J. L. GILMORE, *Clerk*,
By FULLER.

J. A. H., 4.

OFFICE WASHINGTON MARKET COMPANY,
Washington, D. C., May 22, 1874.

Received from J. A. Hoffman, on stand No. 634, 635, 636, two hundred fifty-nine dollars and twenty cents, for rent on account.
$259.20. P. S. SMITH, *Clerk.*

EXHIBIT J. A. H., 5.

$127.50.] WASHINGTON, D. C., *July* 1, 1872.

Sixty days after date I promise to pay to the order of one hundred twenty-seven dollars and fifty cents, for value received, with eight per cent interest, at the National Bank of the Republic.
JAMES A. HOFFMAN.

EXHIBIT J. A. H., 6.

$127.50.] WASHINGTON, D. C., *July* 1, 1872.

Six months after date I promise to pay to the order of one hundred twenty-seven dollars and fifty cents, for value received, with eight per cent. interest, at the National Bank of the Republic.
JAMES A. HOFFMAN.

EXHIBIT J. A. H., 7.

$127.50.] WASHINGTON, D. C., *July* 1, 1872.

Eighteen months after date I promise to pay to the order of one hundred twenty-seven dollars and fifty cents, for value received, with eight per cent. interest, at the National Bank of the Republic.
JAMES A. HOFFMAN.

91 WASHINGTON, D. C., *June* 2, 1875.

Commission met pursuant to adjournment.

Present, counsel on either side. The examination of witnesses was proceeded with as follows:

EDWARD BROOKE.

Deposition of Edward Brooke, for the plaintiff. Edward Brooke, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by M'r Merrick:

Q. State your name, age, residence, and occupation.

A. Edward Brooke; and I am thirty-three years of age; reside on Georgetown Heights; and am by occupation a butcher.

Q. Are you one of the dealers in the Centre Market?

A. Yes, sir.

Q. What stall do you own?

A. Nos. 613 and 614.

Q. When did you become possessed of it?

A. When the stalls were first sold; I think at the auction sale of 1872.

Q. Did you at any time since the first of July last, the readvertisement of the sale, which you recollect, tender your rent accruing since that time?

A. Yes, sir.

Q. Did they refuse to receive it?

A. Yes, sir; to give me a receipt—the same receipt I had always been having.

Q. Who did you tender it to?

A. To M'r Smith.

Q. Clerk of the market?

A. Yes, sir.

Q. What did he say to you?

A. He said he would give me a receipt for use and occupation, and he would credit me for so much money paid the company.

Q. What did you ask him to give you?

A. The same kind of receipt that I had always had.

Q. And he refused to give it to you?

A. Yes, sir.

Q. Had you always paid up your rent promptly?

A. Yes, sir.

Q. What deduction was made in your account?

A. Twenty per cent.

Cross-examination by M'r Birney:

Q. In what kind of money did you make the tender to M'r Smith?

A. I just told M'r Smith that if he was ready to give me a receipt, I was ready to pay him. I did not tender any money. M'r Smith said he would give me a receipt for use and occupation. Then I told him I could not pay him unless I was further advised, or something like that. I do not think I said even that.

Q. Is that what you mean by the tender?

A. Yes, sir.

Q. You demanded a receipt such as you had had?

A. Yes, sir.

Q. When you demanded that receipt you did it with the intention that it should be a receipt to affirm the contract which you understood gave you the right to permanent possession of the stalls, did you not?

A. I do not know as I thought anything about it.

Q. You intended it to be a receipt to affirm the former contract which you had had?

A. No, sir; I only wanted a receipt for my money; I thought that I was entitled to that if I paid it, and I thought they were all asking that.

Q. Has not M'r Smith, the clerk of the market, been ready at all times, for several months past, to receive money due from you to him for the use of those stalls, the money being the rent affixed to each stall?

A. I never could consider it rent. The receipt he proposed to give me, I do not know what I paid it for.

Q. Has he not made publicly known his wish to receive the amount which has been fixed as rent for each stall, provided his receipt
92 would not be in such a way as to affirm the contract as claimed by the stall-holders for permanent business?

A. M'r Smith has always been ready to take the money and give me that kind of a receipt.

Q. The receipt he offered was a receipt saving the rights of the company in this litigation?

A. I suppose it was intended for that.

Redirect examination by M'r Merrick:

Q. You said in your answer on the cross-examination that that was a kind of a receipt that all of them were asking, the same as they had been demanding before?

A. Those that happened to be in the office with me at that time.

Q. There were persons with you in the office at that time?

A. Yes, sir.

Q. And that was the kind of receipt generally demanded?

A. Yes, sir.

Q. And the answer you have given as having been made to you, was the answer generally given to others, was it?

A. Yes, sir.

EDWARD BROOKE.

*The witness, before signing this deposition, makes the following correction to the answer on the first page marked with a star:

I never could consider it rent, from the receipt he proposed to give me. I would not have known what I paid it for.

EDWARD BROOKE.

Sworn and subscribed to before me this 2d day of June, A. D. 1875.

T. A. LAMBERT,
Examiner in Chancery.

RICHARD C. MANN.

Deposition of Richard C. Mann, for the plaintiff. Richard C. Mann, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by M'r Merrick:

Q. State your age, residence, and occupation.

A. I am 27 years of age; reside at No. 73 First s't, Georgetown; and by occupation a butcher.

Q. Are you the owner or possessor of certain stalls in the Centre Market?

A. I am.

93 Q. What is the number?

A. Well, at the sale I purchased No. 646, and paid for it; and there was two stands right next to me that the young man had bought and paid one note on, and had given them up, and the clerk gave me the privilege of selling my stalls and taking those, and taking his notes up, and I did so.

Q. What is the number?

A. It is the half of 638-9.

Q. Have you since the first of July proposed to pay your account to any officers of the company, and what did they say, and what did you say?

A. I went last July, as I always did, and offered to pay M'r Smith my rent in advance for the first quarter, and he refused to take it.

Q. Had you always paid your rent in advance?

A. Yes, sir.

Q. What deduction was allowed to you if you paid it before a certain time?

A. If I paid it before a certain time in the month, I think maybe the 10th of the month—I am not certain about the time—either eight or

ten days before, I would have twenty per cent. off; and I always paid it in advance in order to have that deduction off.

Q. When you went in July and proposed to pay your rent, what did he say?

A. He said he was not taking any rent, and would not give me any kind of a receipt, and would not take any rent.

Q. Did you have your money with you?

A. Yes, sir; I had it in my hand. I suppose he saw it; I had it in my hand.

Cross examination by M'r Birney:

Q. Wasn't it the general rule of the company to make twenty per cent. deduction for payment in advance, within the first ten days of the quarter?

A. Yes, sir; at least, I always got mine off that way.

Q. You did not count any money to M'r Smith when you made this alleged tender?

A. I had already counted it out when I went there. I had it in my hand, and counted it, as I always do. I knew just exactly what it was with the twenty per cent. off. I had it. I did not count it out to M'r Smith when M'r Smith told me that he would not take it. I did not think it was any use then to do so.

94 Q. Have you not since that time understood that the market company, through M'r Smith, was ready to receive at any time from stall holders the amount fixed as rent to each stall if it could do so without affirming the perpetuity of the contracts made at the auction sale in 1872?

A. I went and asked M'r Smith once to show me what kind of receipt he was giving, and he showed me that. I did not offer to pay my rent; but I have always been ready, and am ready now, to pay my rent if he will give me a receipt such as was always given.

Q. You would claim the receipt to be an affirmance of your old contract, would you not, of your right to hold permanently?

(Objected to by M'r Merrick.)

A. I hardly know how to answer that question. I have not thought anything about it.

Q. You would take that view if your counsel so advised you, would you not?

A. I would take them anyhow. I do take that.

Q. Then you would have claimed that the acceptance by M'r Smith of the money which you say you tendered him would have been an admission of your claim to hold the stalls permanently on your purchase in 1872?

A. I do not think anything about that. I only went there to pay my rent, and I always paid it. I do not think anything about it. I went to pay my rent, and M'r Smith would not give me a receipt, and I would not pay it.

Q. You demanded a receipt?

A. Of course I did; as the condition of the payment of the rent. Of course I demanded a receipt. I would not pay any man money unless he gave me a receipt.

Q. Did you make that alleged tender within the first ten days of the quarter?

A. I did, sir, I think. I am not certain now; I think I did.

Q. Did you go out of the market about the first of July and remain out until about the eleventh?

A. I did not.

Q. Did you remain out any number of days?

A. I did not.

Q. Will you state the precise amount that you had in your hands at the time?

95 A. Well, my rent was—I could not exactly state to a cent. I had counted the twenty per cent. off, as I always did, and had it counted out. I could not say positively, but I think it was $52 or $53 for the first quarter. I will tell you: The stalls are laid off in sections there of three stalls. Well, two of us together paid the rent. I had a little more room in the two stalls than the one next to me had, and I paid $22 while he paid $20. I paid $2 more rent than he did because I had a little more room than he did. We made that agreement between us.

Q. Are you not well aware that for several months past the market company has been willing to receive the rents affixed to the different stalls from any stall-holder, provided it could do so without admitting away its rights as it asserts them in this suit?

(Objected to by M'r Merrick.)

A. I am aware they would take the money if we would take their receipts. I do not propose to pay them on that kind of a receipt.

R. C. MANN.

Sworn and subscribed to before me this 2d day of June, A. D. 1875.

T. A. LAMBERT,
Examiner in Chancery.

WASHINGTON, D. C., *June* 4, 1875.

Commission met pursuant to adjournment. Present, counsel on either side. The examination of witnesses was proceeded with as follows:

JOHN JEROME LIGHTFOOT.

Deposition of John Jerome Lightfoot for the plaintiff. John Jerome Lightfoot, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

Examined by M'r Elliot:

Q. State your residence and occupation.

A. I reside in the county of Washington, near Drover's Rest. My occupation is that of a butcher.

96 Q. How long have you been a butcher?

A. About eleven years. I have in been business for myself.

Q. Do you occupy stalls in the Centre Market?

A. Yes, sir, I do; two of them.

Q. Give the numbers.

A. 578 and 579, I think the numbers are.

Q. How long have you occupied a stall in the Centre Market?

WITNESS. In the present market?

Q. No; in the Centre Market.

A. About eleven years, as near as I can recollect.

Q. How long have you occupied stalls in the present market building of the defendant's company?

A. I occupied from the day of the sale.

Q. In what year?

A. 1872, I believe.

Q. Were you a purchaser of the right to occupy those stalls at the sale in 1872?

A. I was.
Q. Did you pay a bonus for that right?
A. I did.
Q. Did you pay your rent from July, 1872, to July, 1874?
A. I did.
Q. Has the company demanded of you any rent as such from July, 1874, to date?
(Objected to by M'r Birney.)
A. They have asked me for money, and I told them I would pay them if they would give me a receipt for rent.
Q. Did they offer to give you a receipt for rent?
A. They could not give a receipt for rent. They wanted to give a receipt drawn up in a way I would not accept.
Q. How was that?
A. I could not exactly state the words. I saw one of the blanks.
Q. Was it like the receipt they gave you from July, 1872, to July, 1874?
A. No, sir; that is the kind of a receipt I demanded of them, and they would not give it.
Q. To whom did you make the offer to pay on the receipt that was originally given?
A. I made the offer to M'r Smith, to M'r Lafferty, I think, and to M'r Bailey.
Q. State how often you made that offer.
A. I could not state the number of times. Every time they would come around and ask for it I told them I was ready to pay them at any time they gave me a receipt for the rent.
97 Q. Do you know of your own knowledge of any similar offers having been made by market dealers to the company and having been refused by the company?
A. Yes, sir; M'r Barnes and myself offered the same day.
Q. Did the company object, prior to July, 1874, to giving receipts for rent?
A. No, sir.
Q. State what the officers of the company to whom you made the offer said in reply to your demand for a receipt for rent.
A. They said they were not authorized to give any other receipt but the one they had of the kind they had drawn up. I do not recollect the kind exactly now.
Q. Did you see the receipt they would give?
A. Yes, sir, and I objected to it. There was one part of the receipt that I objected to. I forget the wording of it now.
Q. Look at Exhibit H of the printed deposition of P. S. Smith, on page 6 of the printed record, and state whether that is the form of the receipt offered by the company since July, 1874 (handing witness record referred to).
A. Well, I cannot say whether they offered that kind of a receipt or not.
Q. You do not identify it?
A. No, sir; I do not identify it; quite likely it might have been. If I had a printed blank I could tell.
Q. Look at the printed blank now handed to you, and state whether that is the form of the receipt, according to the best of your recollection and belief.
A. Yes, sir. I think they offered me this kind of a receipt.
Q. On such a blank?

A. Yes, sir.

Q. State whether, comparing this blank, which you identify, with the printed exhibit, you find it to be the same?

A. Yes, sir; it reads the same.

Q. State whether you ever authorized M'r Merrick, on behalf of yourself and the other dealers in the market, to tender to the company the amount due since the first of July, 1874, for the rent of stalls.

A. Yes, sir.

Q. When, according to your best recollection and belief, was that authority given to M'r Merrick?

A. I think it was shortly after the injunction was granted by Judge Wylie. I could not state the day nor the exact month. I paid no particular attention to it.

98 Q. Were you one of the parties who were authorized by M'r Merrick to make the tender?

A. Yes, sir; I am one of them. I did not authorize him personally.

Q. You know that the authority was given?

A. Yes, sir.

Cross-examination by M'r Birney:

Q. When you demanded the old receipt, you did so because you believed the giving of it would confirm your former contract in the sense in which it was claimed by M'r Hoffman in this suit, did you not?

(Objected to by M'r Merrick, for the reason that witness's belief is not competent, especially upon a question of law.)

Q. As a question of fact, didn't you do it with that idea, with that intention, to confirm your former contract, as you claimed it?

(Objected to by M'r Merrick.)

A. Yes, sir.

Q. And you understood the company to be willing to receive the money in any way which would not confirm your former contract, in the sense claimed by M'r Hoffman in this suit?

A. Yes, sir; that they were willing to receive the money, but not for rent. I declined paying money unless I got a receipt for rent.

Q. That is, you were willing to pay it on your old contract if that was acknowledged, and the company was unwilling to receive it so as to confirm the old contract?

(Objected to as argumentative, and as calling for no question of fact at all.)

A. I was willing to pay the money at any time for the rent, if they would accept it as rent. I would not consent to pay it and not get a receipt showing what I was paying it for. When I pay money I like to know what I am paying it for.

Q. Was it your intention, when you offered the money, to pay it on your old contract as you claimed it, and in no other way?

A. That was my intention.

Q. What was the amount of money that you placed in the hands of M'r Merrick to make a tender for you, if any?

A. I did not place any in his hands at all.

Q. What amount of money did you tell him to tender for you?

A. I did not tell M'r Merrick any amount at all. I was willing to pay my rent at any time, whatever the amount was.

99 Q. Did you see any other parties give M'r Merrick money to pay the company for them?

A. I did not.

Q. Did you hear any other parties instruct M'r Merrick as to the precise amount he was to tender for them?

A. I did not.

Q. How long after the injunction was granted was it that you so instructed M'r Merrick?

A. I could not state the time. I answered that question once before.

Q. State the days; how many days?

A. I could not tell.

Q. About the number; two or three days, or a week?

A. I cannot state. I do not know.

Q. Was it in the same month?

A. I could not state that even.

Q. Some of the other witnesses have stated—

A. M'r Merrick was our counsel to pay our rent if they would accept it as rent. I could not state the date.

Q. Did you give such instructions to M'r Merrick more than once?

A. No, sir; not as I know of.

Q. Was that one time in connection with other parties who gave the same instructions?

A. Yes, sir; it was with other parties, because there was only one instruction given to M'r Merrick to act for a good many of us.

Q. You never renewed after that time the instructions to M'r Merrick, did you? Your instructions were given only once?

A. My instructions were never countermanded at all. My instructions are still out, and have been all the time. They are still out. I never authorized M'r Merrick not to pay them. I was always ready and willing to pay my rent at any time.

Q. That is, you were willing and ready provided your old contract was recognized?

A. Certainly.

Redirect examination by M'r Elliot:

Q. The authority given to M'r Merrick was general, was it not?

A. Yes, sir.

Q. For the purpose of paying the amount claimed by the company as rent?

A. Yes, sir.

JOHN JEROME LIGHTFOOT.

Sworn and subscribed to before me this 4th day of June, 1875.

T. A. LAMBERT,
Examiner in Chancery.

100 GEORGE M. OYSTER.

Deposition of George M. Oyster for the plaintiff. George M. Oyster, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by M'r Elliot:

Q. State your residence and occupation?

A. I reside in Washington, and am a butter dealer.

Q. Have you stalls in the Centre Market?

A. I have.

Q. How long have you kept stalls in that market, prior to the erection of the present market building?

A. About twenty years, I think—myself personally. The stands that

I occupied there in the Centre Market, in the old building, were handed down from my father to a brother, from the brother to me. The stands have been in possession of our family, I think, about some forty-odd years, as well as I recollect. Father went there in about 1830.

Q. Were you present at a meeting of market dealers, held in December, 1870, for the purpose of conferring with the market company in respect to matters of difference between the dealers and the company?

A. I was one of the committee who met the building committee of the Washington Market Company to arrange about the erection of the temporary accommodations for the market people.

Q. Who was the committee on behalf of the market company?

A. I think M'r A. R. Shepherd, and Col. N. G. Ordway, Col. S. S. Smoot, Adolph Cluss, Henry S. Davis. There were present also there M'r Job Angus, M'r T. C. Connolly, I think. There may have been others, but I cannot call them just now to mind.

Q. State what, if anything, was said by the committee, or any member thereof, on behalf of the market company, as to the rights which would be acquired by purchasers of stalls in the new market building. State the same fully.

(Objected to as immaterial and irrelevant.)

A. This meeting between the building committee and the committee representing the dealers was brought about through a visit made by me to M'r A. R. Shepherd, who was a prominent gentleman upon the building committee, and a prominent gentleman in the market company. He said to me that if the market dealers would select a fair, reasonable committee to treat about their present difficulties, the matter could be arranged satisfactorily to the market people. The report was made to a meeting held that afternoon of the dealers on the corner of 8th and E streets. That meeting selected a committee consisting of five, as well as I can recollect just now, who met the building committee at the board of trade rooms that evening. M'r A. R. Shepherd was selected as the chairman of that joint meeting. After settling the difficulties as to the erection of a temporary building, the question was raised as to the rents in that temporary building, but we got no satisfaction. At once the question was asked what the company proposed to do when they got into their new building; and M'r A. R. Shepherd, as the chairman of that joint meeting, stated that the Market Company proposed to give the market dealers vested rights, or rights that could be handed down from father to children, when they got into the new buildings. This statement by M'r Shepherd created a very good feeling among those who were present, and I recollect very distinctly that M'r Hunt became very happy over the remark, and stated that when we came to understand each other better, the Market Company probably was not as bad as what they had been represented, and that he would go home and sleep quietly—which was the first night he could sleep quietly since the buildings were destroyed.

101

(Objected to by M'r Birney as irrelevant.)

Q. Have you not seen the report of the proceedings of that meeting as contained in Exhibit E to the amended bill, being copies of the National Republican and Daily Patriot?

A. I have seen two reports—one published in the Republican and the other in the Daily Patriot.

Q. State whether, according to the best of your recollection, these reports correctly represent what occurred at that meeting, and the statements made at that meeting.

A. I think they do. They are substantially the same.

Cross-examination waived.

GEO. M. OYSTER.

Sworn and subscribed to before me this 4th day of June, 1875.

T. A. LAMBERT,
Examiner in Chancery.

102 THEODORE BARNES.

Deposition of Theodore Barnes for the plaintiff. Theodore Barnes, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

WITNESS. There is an explanation that I desire to make before I proceed with my testimony. I wish to say a word about the prices paid on my stalls, and to correct a statement I formerly made. The correct price that I paid for my three stalls was $487.99.

M'r BIRNEY. Is that the bonus?

A. Yes, sir. I afterwards gave up one of them, No. 598, and pro rata, the price I gave for all the others. I was entirely mistaken about the object of that committee that conferred with the market committee on behalf of the market dealers. I knew that meeting had some reference to rent, but I could not explain at the time M'r Birney put the question to me about the rents. It was to have the rent reduced on the stands as follows: Butcher stands reduced to $8.33 per month, in the 7th and 9th street wing; $6 in the B street wing, and all others $4 per month; and they demanded that the sale of the stalls should not take place in July, 1874.

Examined by M'r Merrick:

Q. Was that the time to which you refer in your examination when you last testified?

A. It was.

Q. Was there any meeting held for the purpose of making propositions to the Washington Market Company, or any committee appointed to negotiate with them, at which there was any suggestion made as to keeping the market open in consideration of the payment of rent prior to July, 1874?

A. None that I know of.

Q. You were, then, mistaken when you testified at your last examination in reference to the time at which that meeting was supposed to be held?

A. I was.

Q. Now, at what time was there any meeting, at which a discussion was had with reference to payment of rent?

A. There was not any that I know of.

103 Q. In your examination the other day you spoke of propositions having been made to the market company by a committee, or by a meeting held in consideration of their closing the market-house on two or three days of the week, the stall-holders would pay their rent. Have you refreshed your recollection in reference to that circumstance? If so, state what you know in regard to it.

A. There was a committee appointed to meet a committee of the Washington Market Company, to see if they could not get the Washington Market Company to close their market three days in the week. That committee made an appointment with some of the Washington Market Company to have a meeting, and at an appointed time they went according to promise, and there was not a sufficient number of the

Washington Market contractors present to have a meeting. A great many were out of town. They had no business meeting at all. I found this out by inquiry of the committee, and they made the statement to me—the committee that was appointed in our behalf.

Q. Do you know anything of it of your own knowledge?

A. I do not.

Q. When was that committee appointed; do you recollect?

A. It was appointed during July, I think, to the best of my knowledge.

Q. Was there any proposition about paying rent at that time in consideration of closing the market-house at all?

A. Not to my knowledge.

Q. Were you, as far as you know, and were the stall-holders always ready to pay their rent under their contract of purchase in 1872?

A. We have always been ready to pay our rent. I have been for one and a number of others.

Q. When you left your stalls in the market-house in July, state whether or not it was in consequence of a notice served on you that you would be regarded as a trespasser?

(Objected to by M'r Birney.)

A. That was the reason.

Q. Did you intend at that time to abandon your right at all?

A. No, sir.

Q. Although not standing there, and although notified you were a trespasser, you still hold the title and still claim the right to occupy?

A. I always held the claim to leave my stall at any time.

104 Q. You were asked by the counsel in the opening of your examination whether you had just conferred with your counsel, and whether in answer to your questions you did not reproduce what was said, and you stated that you did. Did you reproduce what was said, because it was said to you, or because it was a fact?

A. I stated it because it was a fact in this case.

Cross-examination waived.

Q. If you have a copy of a notice which you say was served on you, produce it, and have it attached to your deposition.

(Request of M'r Merrick objected to by M'r Birney, on the ground that the testimony of the witness had been closed.)

A. I have got a similar notice. I received a notice similar to the one that is now handed to me.

(Paper introduced in evidence, made a part hereof, and marked Exhibit T. B. 1.)

Q. Were notices similar to the one you have handed to the commissioner served on all the market men, so far as you know at that time?

A. They were.

Q. At what time?

A. It was just before the day—the 1st of July—the 1st day, to the best of my knowledge.

Q. Was there one served preceding that?

A. I think there was.

Q. What was the nature of the one served preceding that?

A. I cannot state exactly, but if I were to see it I could recognize it.

Q. Is this a copy of the first notice to which you refer? (handing witness a paper.)

A. Yes, sir.

(Paper introduced in evidence, made a part hereof, and marked Exhibit T. B. 2.)

Q. Was there any before that one?

A. I think that is about all; I do not know. I could not state positively. I got all the notices given to the occupants in the stalls.

THEODORE BARNES.

Sworn and subscribed to before me this 4th day of June, 1875.

T. A. LAMBERT,
Examiner in Chancery.

Adjourned to meet on Saturday, June 5th, at 2 o'clock, at the same place.

T. A. LAMBERT,
Examiner in Chancery.

105 NOTE BY THE WITNESS.—The witness, Theodore Barnes, before signing this deposition, applied at the office of the examiner for the report of his testimony delivered on a previous examination, but not being able to obtain it, signs this part of his deposition without prejudice to his right to correct any errors that may be discovered by him in the report of his testimony prior to the date of the foregoing.

THEO. BARNES.

Witness:
R. K. ELLIOT.

T. B. 1.

OFFICE WASHINGTON MARKET COMPANY,
July 1, 1874.

To :

Your right to occupy stands or stalls Nos. 175, 176, 177, for two years from July 1, 1872, having this day expired, you are hereby again notified to quit, and deliver up the same to the company on this day, according to the market regulations.

Any dealer remaining in occupancy of his stall or stand after this date will be a trespasser upon the property of the company; will be liable for all damages arising therefrom, and to suit for such damages; also to summary ejectment and prosecution under the regulations at any time, at the will of the company, without further notice.

Any delay or iorbearance on the part of the company to enforce their full rights against any occupant cannot be deemed as a waiver of their rights, but the trespasser may expect to see them enforced at any time, and in any manner.

P. S. SMITH, *Clerk.*

T. B. 2.

WASHINGTON MARKET COMPANY,
Washington, D. C., May 29, 1874.

To :

Occupant of stall or stand No. :

SIR: At a meeting of the directors of this company, held May 28, 1874, the following votes were adopted:

"Voted, That notices be issued to all occupants of stalls and stands to vacate the same July 1, 1874, in accordance with the regulations

106 and their written agreements, unless their leases shall, before that time, be renewed by purchase at auction, in accordance with the charter."

"Voted, To instruct the clerk to receive no rentals in advance for the quarter commencing July 1, 1874, until further orders."

In accordance with the foregoing vote you are hereby notified to quit, and deliver up your stall and stand to the company on or before July 1, 1874, unless, before that time, your permit is renewed by purchase at auction, in accordance with the charter of the company.

B. D. WHITNEY,
Secretary.

[Extract from market regulations, adopted May 23, 1872, signed by all occupants.]

At the end of the term of each occupant he shall quit and deliver up his stand peaceably, and in as good order and condition, except ordinary wear, as the same now is, or may be put into by the company.

WASHINGTON, D. C., *June* 5, 1875.

Commission met pursuant to adjournment at the law office of T. A. Lambert, esq. Present, counsel on either side. The witnesses who had been summoned to be present not appearing, an adjournment was had until Monday, June 7th, at 2 o'clock p. m.

T. A. LAMBERT,
Examiner in Chancery.

WASHINGTON, D. C., *June* 7, 1875.

Commission met pursuant to adjournment. Present, Mess'rs Merrick and Elliot, counsel for the plaintiff. Owing to the absence of General Birney, who was expected to be present to cross-examine the witness Hunt, who was in attendance, the commission adjourned to meet on Wednesday, June 9th, at 12 m.

T. A. LAMBERT,
Examiner in Chancery.

107 WASHINGTON, D. C., *June* 10, 1875.

Commission met pursuant to adjournment. Present, counsel on either side. Owing to the absence of witnesses, adjourned to meet on Friday, 11th inst., at 1 o'clock p. m.

T. A. LAMBERT,
Examiner in Chancery.

WASHINGTON, D. C., *June* 11, 1875.

Commission met pursuant to adjournment. Owing to the absence of witnesses, adjourned to meet on the 15th day of June, at 2 o'clock, at the same place.

T. A. LAMBERT,
Examiner in Chancery.

WASHINGTON, D. C., *June* 15, 1875.

Commission met pursuant to notice. Present, counsel on either side

JOSEPH C. FEARSON.

Affidavit of Joseph C. Fearson. Joseph C. Fearson, being of lawful

age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

By M'r Elliot:

Q. State your full name.
A. Joseph C. Fearson.
Q. State where you reside.
A. I reside at 921 19th st, n. w.
Q. State your business.
A. I am a produce dealer.
Q. What kind of produce?
A. Butter and eggs.
Q. How long have you been a produce dealer?
A. Since July, 1848.
Q. Did you occupy a stall or stalls in the Washington Market?
A. Yes, sir.
Q. Did you occupy a stall or stalls in the old Centre Market? If so, state how long you occupied them.

A. From the first of July; I speak of the butter business,
108 when I say I was a dealer in produce. Some two or three years before I was not stand holder, nor a stall owner, but from the first of July, 1848, until the time it was burned down.

Q. When was it burned down?
A. Now, I do not know exactly; '71 or '72—'70 or '71.
Q. '70 or '71?
A. Somewheres along there.
Q. Did you purchase at the sale of stalls made by the Washington Market Company in 1872?
A. I did.
Q. Were you present at the meeting of the committee on behalf of the market dealers, and the committee on behalf of the Market Company, in the month of December, 1870?
A. I was, sir.
Q. Do you recollect who composed the committee on behalf of the Market Company?

M'r BIRNEY. Note my objection to the last question as leading—to the question before the last.

A. I do not know that I recollect all. I know M'r Emerson.

M'r ELLIOT. I speak of the committee of the Market Company, not the dealers.

A. I recollect M'r Shepherd, M'r Henry S. Davis, M'r Cluss, and M'r Ordway, and I think M'r Connoly. I am not right sure.
Q. Do you recollect whether M'r William E. Chandler was there or not?

(Question objected to by M'r Birney.)

A. It appears to me; I cannot say positively, because I did not lay any stress on the meeting at all.
Q. Who composed the committee according to the best of your recollection?
A. M'r George W. Emerson, M'r Hunt, M'r Oyster, and myself, and I do not know whether M'r Richardson was on our side or the other side, but he was there.
Q. Where did that committee meet?
A. It met a few doors east of the corner of 9th street, on, I do not know whether called Penn. ave. or some other——

Q. Market space?

M'r BIRNEY. All questions and testimony in relation to this meeting objected to.

A. I think it was called the board of trade room.

Q. State what, if anything, was said by any member of the committee on behalf of the Market Company at that meeting, in respect to the rights which the dealers, or those purchasing the stalls in the new market building of the company, would acquire by virtue of such purchase.

109 (Question objected to by M'r Birney as leading and irrelevant.)

A. There was some misunderstanding between the committee on the part of the market company and the dealers, and the dealers were about to withdraw dissatisfied. M'r Shepherd and M'r Davis, and some other members, walked to the front N. of the building, and M'r Shepherd stated that we should all be satisfied, and that the property acquired in the benches should be handed down to our children. When they adjourned they seemed a good deal more satisfied than they were when they went there.

Q. To which M'r Shepherd do you refer?

A. I mean Alexander H. Shepherd.

Q. Alexander R. Shepherd?

A. Alexander R. Shepherd. He was chairman of the committee.

Q. To whom did he make that statement?

A. I think it was to M'r Hunt. M'r Hunt and M'r Emerson were the persons nearest. M'r Oyster, too, talked about it; but M'r Hunt, I think, made the question.

Q. You can state that M'r Shepherd's statement to M'r Oyster was made in the hearing of all the persons associating with the market dealers, or not?

(Question objected to by M'r Birney as leading.)

A. That I cannot say. It was heard by several, because M'r Emerson and myself walked home together, and we were talking about it all the way home.

Q. What was the effect of that statement, so far as you observed?

A. We became satisfied.

Cross-examination by M'r Birney:

Q. At the time of this meeting had the temporary sheds been built for the dealers?

A. Some had, and some had not.

Q. Were not most of them still unbuilt?

A. The company, according to the best of my recollection, had built sheds along the line of Pennsylvania avenue, between 8th and 9th.

Q. Had they built any between 7th and 8th?

A. No; I think the dealers themselves had built some.

Q. Had the temporary stalls been rented out?

WITNESS. You mean in the main line, or those that were built on the line of the avenue?

M'r BIRNEY. I mean those built on Pennsylvania and Louisiana avenues.

110 A. If they were, they were not taken up by the regular dealers. There were a good many men in there.

Q. Was it not the object of this conference meeting between the two committees to make arrangements for terms on which the sheds should be built, and the stalls or sheds should be rented out to dealers?

A. I think the committee—it was for the accommodation of the dealers, for the accommodations that they were to get. There was——

Q. They were those accommodations thus to be received by the dealers before the main building, the permanent building, was to be erected?

A. Yes, sir. That was what we were talking about.

Q. That was the object of the meeting?

A. You are a little too fast. We had a meeting of dealers. Had a meeting at the corner of "E" and 9th, to object to the style of accommodations that the dealers were to have in the temporary building, and this committee was appointed to confer with the Market House Company meeting—committee—to better those accommodations.

Q. Your instructions as a committee, then, related solely, did they, to the betterment of the temporary accommodations to be provided for the dealers prior to the erection of the main building?

A. I do not think they had any instruction.

Q. That was, however, the object of the negotiation?

A. Yes, sir.

Q. What was the object understood beforehand?

A. The object that we went there for was to get the best accommodations we could out of the Market Company.

Q. In the temporary sheds, do you mean?

A. In the temporary sheds.

Redirect examination by M'r Elliot:

Q. When you refer to the temporary sheds, do you mean the sheds erected after the conflagration of the main building, or the sheds erected prior to the burning of the same building, and fronting on Louisiana ave. between 8th and 9th streets, for the accommodation of those persons who were occupying stalls south of the main building?

(Question objected to by M'r Birney as leading.)

111 M'r ELLIOT. No; it is not leading. I ask which he refers to.

The question was then read to the *to the* witness.

A. I refer to the straight line of sheds first made from 7th to 9th street, in one line. I do not mean those that were made up above there. They were made on the avenue at first. We were not interested in them.

Q. You stated in your cross-examination that the object of this conference between the committees was to obtain the best accommodations that you could get in the temporary sheds. Was that the sole object of the meeting?

A. No, sir. We wanted to know what we were going to get in all.

Q. In the event of building a market house?

A. Yes, sir.

(Objected to by M'r Birney as improper on re-examination.)

Q. What led to the statement which you have testified M'r Shepherd made to the conference committee as to the rights which the dealers would acquire in the stalls of the new market building not——

(Question objected to by M'r Birney as being examination-in-chief.)

M'r ELLIOT. What led to that statement about the present market building?

A. The committee on the part of the dealers thought they saw trickery in the action of the company, and that was the cause of this committee being appointed. Don't know that anybody ever said that, but it was felt by the market dealers. I personally felt it very strongly, and I have never been relieved of it.

Q. Do you recollect who propounded the question to M'r Shepherd as to the rights which the purchasers of stalls would have in the new market building?

A. I think it was M'r Hunt.

Recross-examination by M'r Birney:

Q. Then the market company could do nothing without your suspecting trickery in its conduct, could it?

A. Oh, yes, they could! Oh, yes, they could! I could cite to a point, if you would allow it.

M'r ELLIOT. You may answer the question. It is your privilege to answer it.

A. When the stalls were put up, I took, for instance, from what M'r Oyster told me, in the purchase of my stall——

(Objected to by M'r Birney as not responsive.)

M'r BIRNEY. That is all I have to ask.

M'r ELLIOT. You may answer the question fully.

112 A. I took, for instance, from what M'r Oyster said, that when we purchased the stalls—thus it came from the president of the company—that those who paid their rents would never be disturbed.

(Objected to by M'r Birney as irresponsive and improper.)

Q. Is that all?

WITNESS. Yes, sir.

Q. I believe you said M'r Oyster was a member of the committee?

A. Yes, sir.

JO'S C. FEARSON.

Adjourned until to-morrow, at 2 o'clock p. m.

WASHINGTON, D. C., *June* 16, 1875.

Commission met pursuant to adjournment. Owing to the absence of witnesses, adjourned to meet on the 17th day of June, at 2 o'clock p. m., at the same place.

T. A. LAMBERT,
Examiner in Chancery.

WASHINGTON, *Thursday, June* 17, 1875.

Two o'clock being the hour appointed for the meeting of the commission, at 2.15 M'r Birney, counsel for the market company, was in attendance, but no witness. At half past two the witness, James A. Hoffman, appeared, and his examination was proceeded with by M'r Merrick, M'r Birney being absent.

JAMES A. HOFFMAN.

Deposition of James A. Hoffman. James A. Hoffman being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by M'r Merrick:

Q. State what your relations are to the Northern Liberty Market Company?

A. I am the president of that company.

Q. Do the company own the property upon which the market house is built?

A. Yes, sir; they do.

113 Q. When was it deeded to the company?

A. Deeded to the company in March, 1874, I think, or about that time.

Q. Will you have a copy of that deed made and attached to your deposition?

A. I will. Yes, sir.

Q. State the amount of the capital stock of the company, and the amount per share that is paid up.

A. The amount of capital stock is three thousand shares, $25 a share, of which $22½ have been paid in.

Q. Look at Exhibit "E," attached to the testimony of Thomas Dowling, and state whether the parties whose names appear there as having purchased stalls in what is termed the "Savage Square Market," meaning the Northern Liberty Market, are stockholders in that company or not.

A. I make fifteen stockholders out of twenty-one names there, to the best of my recollection.

Q. What is the size of the butchers' stands in the Northern Liberty Market?

A. They are 9 × 8½, and contain 76½ square feet.

Q. What is the size of the hucksters' stands in the Northern Liberty Market?

A. They are 29⅜ square feet.

Q. What is the size of the butter-stands in the Northern Liberty Market?

A. They are 53½ square feet.

Q. What is the size of the butchers' stands in the Washington Market?

A. 6 × 8, equal to 48 square feet.

Q. What is the size of the hucksters' stands in the Washington Market?

A. 19½ square feet.

Q. What is the size of the butter-stands in the Washington Market?

A. 36 square feet.

Q. In selling the stands of the Northern Liberty Market, what time was given to the purchaser within which to pay the purchase-money?

A. He paid down a hundred dollars cash, and had nine years to pay the balance in.

Q. In equal installments?

A. Yes, sir. 19 equal installments of six months each.

Q. What was the time given at the sale of the stalls in the Washington Market for the payment of the purchase-money?

A. Six, twelve, and eighteen months, I think, sir, to the best of my recollection. One-third cash, and the balance six, twelve, and eighteen months.

114 Q. What is the rent per square foot for butchers' stands in the Northern Liberty Market, per square foot, per annum?

A. It is $1.56 and $5\frac{3}{0C}$ of a mill.

Q. What is the rent per square foot per annum for the butter-stalls in the Washington Market?

A. $3.50.

Q. What is the rent per square foot per annum for butter-stalls in the Northern Liberty Market?

A. The rent of the butter-stalls in the Northern Liberty Market is $60 a year.

Q. How much per square foot?

A. I have not figured that.

Q. Have you prepared the paper showing the relative cost to the purchaser of butcher, butter, and huckster stalls in the Centre Market, and the cost to the purchaser of similar stalls in the Northern Liberty Market? and, if so, produce it, and file with the commissioner.

A. I have, sir. (Witness produces paper.)

Q. Is that paper and statement of facts correct?

A. Yes, sir. It is a perfectly correct statement.

Q. State the relative cost of the different kinds of stands to the purchaser, putting it at 99 years, in the two markets.

A. In making out this statement, I took my own stands, having the best knowledge of those stands, more knowledge of the cost of my own than I did of other people's. I will commence with butcher stands first.

EXHIBIT A.

Estimate of cost of stand of James A. Hoffman, in the Washington Market, compared with the cost of his stand in the N. L. Market, for term of 99 years.

BUTCHER STAND.

In the Northern Liberty Market.

Cost of stand containing 76½ square feet	$2,200 00
Rent per year $120, equal to $1.56 and $\frac{5}{16}$ mills per square foot, for 99 years	11,880 00
Total am't paid in N. L. Market for 99 years	$14,080 00

In Washington Market.

Cost of purchase of stand containing 48 sq'r' feet	$170 00
Rent per year, $168, at $3.50 per square foot, for 99 years, total amount	$16,802 00
Amount paid to Washington Market Co., in excess of the amount paid in the N. L. Market Co., for the term of 99 years	$2,722 00

115

HUCKSTER STAND.

Estimate of cost of stand of W'm Anderson, in the Washington Market, compared with the cost of his stand in the N. L. Market for a term of 99 years.

In the Northern Liberty Market.

Cost of stand containing 29¾ square feet	$400 00
Rent per year $60, equal to, for 99 years	5,940 00
Total amount paid in N. L. Market for 99 years	$6,340 00

In Washington Market.

Cost of purchase of stand containing 19¼ sq'r feet	$142 00
Rent per year $63, equal to, for 99 years	6,237 00
Total amount paid in the Washington Market	$6,379 00
Amount paid in the Washington Market in excess of the amount paid in the N. L. Market for 99 years	$39 00

BUTTER STAND.

Estimate of cost of stand of Geo. M. Oyster, in the Washington Market, compared with the cost of his stand in the Northern Liberty Market for term of 99 years.

In the Northern Liberty Market.

Cost of stand containing 53½ square feet	$1,400 00
Rent per year, $60, equal to, for 99 years	5,940 00
Total amount paid in the Northern Liberty Market for term of 99 years	$7,340 00

In Washington Market.

Cost of stand containing 36 square feet	$275 00
Rent per year $81, equal to, for 99 years	8,019 00
Total amount paid in the Washington Market for 99 years	$8,294 00
Amount paid in Washington Market (in excess) than in the Northern Liberty Market for term of 99 years	$446 00

Q. How much did the ground upon which the Northern Liberty Market is built, and which was purchased by the company, as you have stated, cost?

A. $110,000.

Q. How much did the building that has been erected and
116 completed on your ground cost?

A. $137,000, and a fraction over, I think.

Q. The purchasers of stalls in the Northern Liberty Market purchased in perpetuity, did they not?

A. Purchased for 99 years, renewable forever.

Cross-examination by M'r Birney:

Q. How far is the Northern Liberties Market from Penn. ave.?

A. I will have to count up on that. Let me see. In squares you want, I suppose?

M'r BIRNEY. Yes, sir.

A. It is a little over eight blocks, according to the map.

Q. How many streets are between it and 7th street?

A. Only one square.

Q. What one?

A. 6th street.

Q. Is it situated on 6th street?

A. No, sir; it is on 5th street. Allow me to make a correction, I see the error. There are two streets between. It is right on 5th street; that is why I made the mistake.

Q. What is the nearest horse-car road to it?

A. I think the 7th street road, sir, is the nearest one, about an equal distance between the 7th and the Columbia.

Q. How far is it from your market to the Corcoran Market?

A. About four squares and a half, sir.

Q. Is the Corcoran Market situated on a horse-car road?

A. Yes, sir.

Q. On which?

A. Situated on the 7th street road.

Q. Has your company changed the number of its shares since it began business?

A. Yes, sir.

Q. What change has it made?

A. It complied with the incorporating act, reducing the shares down to an amount sufficient so that they would be taken. In other words, we could not run a capital stock of so many shares, and not have that many.

Q. How many shares did you have at first?

A. I think there were 10,000 or 5,000, I am not sure which; I think it was 10,000, though.

Q. Have all the assessments of $22 on each share been paid in?

A. They have, sir.

Q. How many bonus notes were given to the company at their sale of the right to occupy stalls which have not been paid, not been paid at maturity?

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A. I think all that have been given have been pretty well taken up. Some few have not signed their notes.

Q. How many neglected to sign their bonus notes?

A. Not very many, sir, and since the maturity a great many paid their notes that have not signed; that is, the greater portion of those that had not signed, when they paid their notes, then signed them.

Q. Did you sell the right of choice at auction, or not?

A. Yes, sir.

Q. What did the purchaser take by his purchase?

A. He took his choice, I suppose, sir.

Q. Did the purchaser enter into any obligation to occupy for a specific time?

A. He signs a regular lease.

Q. Have you a copy of any of those leases?

A. No, sir; I do not know as I have.

Q. Is the form of the lease printed?

A. Yes, sir. I think I can obtain you a copy.

Q. Will you obtain a copy of the blank form of lease and *and* attach it to your deposition?

A. I will, sir.

Q. Under the lease, did the purchaser bind himself to occupy for any stated period, or was his engagement to pay rent only so long as he should occupy? Please state the purport of the lease on this point.

A. The lease will answer that question better than I can. I could not answer that, because my memory is taxed a great deal with other matters; and it is not fresh on the matters of the lease, because I have not looked at it for a very long time. I answer by saying that the lease will show it, and answer the question.

Q. Is the stall-holder in your market at liberty to quit and abandon his stall whenever he might choose to do so, forfeiting, of course, the amount paid for bonus?

A. No, sir.

Q. How long is he bound to pay rent for the stall?

A. He is bound to pay his notes and his rents as long as the stall stands in his name.

Q. What amount has your company paid for taxes since it went into operation?

A. Well, I think our tax-bill for 1874 was $2,051, I think. I do not know the exact amount.

118 Q. What is the tax assessed for the present year?

A. That I do not know. I have never seen it. That is, you mean the tax up to the first of this month or the tax for 1875?

M'r BIRNEY. The tax for the last of this month.

A. That is the tax I speak of; the tax for 1874–'5.

Q. Does the company pay any ground rent?

A. No, sir; we own our ground.

Q. What are the expenses for policing the market, either by month or year—take any convenient measure of time—cleaning it up?

A. Indeed I could not tell; but they are about $42.50 a week, sir.

Q. What do other current expenses amount to for week, month, or year?

A. I think they are about—you mean including gas and everything?

M'r BIRNEY. Yes, sir; all the incidental current expenses.

A. Well, I think that it is about $450 a month, I guess, as near as I can come at it. I only state these things only as near as I can get at it. I do not state them as authenticated facts.

Q. Does your company owe any debts; and if so, what is the gross amount?

A. We have $150,000 of bonds out.

Q. Are you indebted for anything else?

A. Well, there may be some small debts out. I do not think there is. There may be one or two thousand standing out besides that.

Q. What is the present market value of the bonds of your market company?

A. There were negotiated $90,000 of them at par and $60,000 at ninety cents.

Q. What is their present market value?

A. That I could not answer, general. They are eight per cent. bonds.

Q. When do those bonds become due?

A. They fall due from one to ten years.

Q. How much money have you in the treasury at present?

A. You are too hard for me, general. I cannot answer those questions. I am not treasurer of the company. I do not think they have any great deal there, though. We are pretty hard up at this time. I do not think we have any great deal. I do not know exactly what amount.

Q. Is it not true that some of the bills and claims against the company are due and not paid?

A. The only bill I know of that is due and not paid is the tax bill.

119 Q. Are the salaries all paid?

A. Yes, sir.

Q. What is your bill of assessment for especial improvements?

A. The property when we bought it we bought it with all special improvements paid.

Q. And never paid them at all? You had none to pay?

A. No, sir. All paid when we bought it. In other words, we bought the property free from all incumbrances. The improvements were all made except the sidewalks on 5th street, which we laid afterwards.

Q. If the Northern Liberty Market Company had to pay $5,000 a year rent, a bill of $17,000 for especial improvements, and the annual taxes at $12,000, and policing and current expenses of about $10,000, what difference would it make in the financial condition of the concern?

A. I should think it would make quite a difference in either one of the markets.

M'r BIRNEY. I did not ask that.

A. I am answering to the best of my ability. I know what your taxes are, general; they are not that much. I suppose, if the company had to pay out a revenue of that kind, that it would make some difference in the financial workings of the concern; but instead of paying rent we lay out of the interest of our purchase money, which is equivalent to rent. I will further answer, if you will allow me, that it does not cost $10,000 a year to police all the markets in the city.

Mr BIRNEY. Insert the words "and current" after the word "policing" in the last question, so that it will read "policing and current expenses."

WITNESS. The current expenses is a separate affair altogether.

Q. Did you make out yourself all the calculations in Exhibit A?

A. Myself and the secretary of the company did.

Q. Who is the secretary of the company?

A. George W. King.

Q. How many feet square are owned by the Northern Liberties Market Co. for their market?

A. As near as my recollection serves me there is 100,301 square feet.

Q. Will you please produce a copy of the regulations of the Northern Liberties Market Company and attach to your deposition?

A. Yes, sir.

120 Q. How many vacant stalls are there in the Northern Liberties Market?

A. I think there are about forty, sir, of all kinds.

Q. Of those, how many are butcher stalls?

A. I think there is sixteen, sir, as well as I remember.

Q. Do the bonus notes run at interest; and if so, how much?

A. They do, sir; they bear 8 per cent. interest.

Q. How many days in a week is the market kept open in the Northern Liberties Market?

A. It is kept open Monday, Wednesday, Friday mornings, and Saturday evenings.

JAMES A. HOFFMAN.

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN
vs.
THE WASHINGTON MARKET CO. } No. 3797. Eq. doc. 13.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses begun and held on the 21st day of December, A. D. 1874, and continued from time to time by me until the 17th of June, A. D. 1875, when the within depositions were taken, I, T. A. Lambert, an examiner in chancery, did cause to be personally present at my office, rooms 2 and 4, Columbian College Law Building, in the city of Washington, in said District, James A. Hoffman, Theodore Barnes, Benjamin F. Hunt, Thomas J. Murray, Thomas Berry, Edward Brooke, Richard C. Mann, John Jerome Lightfoot, George M. Oyster, and Joseph C. Fearson, to testify on the part and behalf of the complainant in a certain cause now depending in the supreme court of the District of Columbia, wherein James A. Hoffman is complainant and the Washington City Market Company are defendants.

[SEAL.]

T. A. LAMBERT,
Examiner in Chancery.

121 MAY 11.

THEODORE BARNES.

Theodore Barnes, a witness produced on behalf of the complainant, being duly sworn, was examined, and he did thereupon depose, testify, and say as follows:

Q. State whether you are a butcher occupying a stall in the Centre Market?

A. I am.

Q. State how long you have occupied a stall in the Centre Market?

A. I have been in the market, I suppose, about eight or nine years.

Q. Were you a purchaser at the sale of stalls in the Centre Market in 1872?

A. I did purchase at that sale two stands, numbered 599 and 600.

Q. Did you pay your bonus?

A. I did, sir.

Q. Have you been in the occupation of those stalls since your purchase in 1872, down to date?

A. I have.

Q. What amount of rent are you charged for the stalls you occupy?

A. Fourteen dollars a month for each stall.

Q. Have you paid your rent regularly?

A. I always met with the requirements of the company.

Q. To what date did you make the last payment of rent?

A. The 1st of July, 1874?

Q. Has the company demanded any rent of you since that date?

A. They have.

Q. Did they demand it as rent?

(Objected to as leading.)

A. They did not.

Q. State how they demanded it, and what they demanded?

(Objected to as irrelevant.)

A. They demanded for use and occupation.

Q. Since when?

A. Since the 1st of July, 1874.

Q. State whether you ever tendered your rent in money to the company or any of its officers or agents, or offered to pay the same at any time since the date you have mentioned?

(Objected to as above.)

A. A few days after the decision of Judge Wylie I sent my money for rent by my clerk, W'm Kidwell, to the clerk of the market company, P. S. Smith. The market company's clerk sent word back by my clerk, W'm Kidwell, that the company were not receiving any money for rent at that time. After that I tendered all money due said market company in the presence of M'r Edward Brook, if the market com-
122 pany would give me a receipt for rent. The clerk of the company answered and said that he could not give us a receipt for rent.

(So much of the answer as involves hearsay testimony objected to by M'r Chandler.)

Q. At what date and in what place and in whose presence did you make the tender to which you have last referred?

A. About a month or six weeks ago, in the office of the market-house company, in the presence of M'r Edward Brook, and to M'r P. S. Smith.

Q. State what, if anything, you have heard the officers or agents of the market company say since the 1st of July last, in respect of the re-

ceipt of rent from stall-holders who purchased in 1872, and what form of receipt would be given by the company?

A. I have heard them say that the only receipt they could give was for use and occupation; that they could not give a receipt for rent. I refer to the clerk of the market, M'r Smith.

Q. Look at this blank and say whether that is the form of receipt offered by the agent of the company?

A. That is. (Annexed, marked T. B., No. 1. Not to be printed if found to be identical with blank form of receipt filed as an exhibit with deposition of P. S. Smith.)

$——.] OFFICE WASHINGTON MARKET COMPANY,
Washington, D. C., ———, 187 .

Received of , dollars, a sum equal to the amount of rent of stall No. , from to , to be accounted for according to the legal rights and obligations of the payer and the market company, as they may be finally determined by the court; in the meantime none of said rights or obligations to be waived or affected by said payment or its reception.

Clerk.

Q. Now, look at this receipt, dated at the top April 1, 1874, and state whether it is the receipt given to you by the market company for rent up to June 30, 1874.

A. It is.

(Said receipt is herewith filed and returned, marked Exhibit T. B., No. 2.)

Q. State whether you know of any other stall-holder or stall-holders who purchased at the sale in 1872, having tendered their rent or offered to pay since the 1st of July, 1874?

(Objected to as above.)

A. I know of a number.

123 Q. Did the company receive it?

(Objected to unless it first appears that the witness was present.)

A. Not in my presence.

Q. Do you know of any cases in which they did not receive it?

(Objected to as above.)

A. I do.

Q. Do you know why they did not receive it?

(Objected to.)

A. Because the parties would not pay unless they received a receipt for rent.

Cross-examined by M'r Chandler:

Q. Did you leave the market July 1st and return July 11th, 1874?

A. I did.

Q. Why, then, did you state that you had occupied your stalls ever since July, 1872?

A. I returned to the market after Judge Wylie's decision—after the injunction was granted in this case. I still occupied the stall. I had my fixtures all there.

Q. Did you not leave the market July 1st, 1874, after conference and arrangement with other butchers, and in company with them?

A. I didn't leave it in company with anybody. I occupied stalls at the same time in the K street market.

Adjourned until Thursday, the 19th day of May, A. D. 1875, to meet at the same place at 11 o'clock a. m.

T. A. LAMBERT,
Examiner.

WEDNESDAY, *May* 19, A. D. 1875.

Met pursuant to adjournment; present, R. T. Merrick, esq., of counsel for complainant; W'm E. Chandler, esq., of counsel for defendant, and the witness, Theodore Barnes; whereupon the cross-examination of the latter was resumed by M'r Chandler, as follows:

Q. Did you not leave July 1st, after conference with the other butchers, and in pursuance with a general understanding among them?

(Objected to by M'r Merrick.)

A. I stood in the K street market until the injunction against the market company in regard to the selling of our stands was sustained
124 by the court. I then took possession of my stands, after the injunction was granted. At the same time, in leaving the market I did not relinquish my claim upon the said stands. I left because the company served a notice on me that I was a trespasser.

(Answer is objected to by M'r Chandler as not responsive.)

Q. When did you last confer with your counsel, M'r Merrick, in relation to the subject-matter of the last inquiry?

A. I never asked my counsel any questions in regard to this matter especially, except during the pending of the injunction.

Q. Did you not, within the last ten minutes, have conversation with your counsel in relation to the subject-matter of the first inquiry this day put to you?

A. I did not ask M'r Merrick, my counsel, any questions in regard to the matter. He came to me and said, "By your leaving the market you, of course, did not relinquish your claim on your property." I answered, "I did not."

Q. Did he make this statement to you just after hearing read over your prior cross-examination, and directly after the reading aloud, in the presence of the examiner, of the closing interrogatory and answer?

(Question objected to, as this matter is irregular and has gone sufficiently far, by M'r Merrick.)

A. He did.

Q. And you immediately reproduced his statement in answer to the first question put to you, did you not?

(Question objected to by M'r Merrick.)

A. I always claimed that I had a right to my stalls, after buying at the first sale of the company, according to the charter, which says that the purchaser shall remain in possession of the stands purchased at the sale, if he paid his rents regularly; I always paid the requirements made to me by the company, paying at the sale my bonus cash and my rents in advance, therefore I considered the property that I had been paying my rents for mine as long I paid my rents.

(Answer objected to by M'r Chandler as irresponsive and evasive, and the question is repeated, with the request to the examiner to instruct the witness to give direct answers to questions.)

Thereupon the witness answered: I did.

Q. Will you now answer the question first put to you, which is as follows: Did you not leave July 1, after conference with the other butchers, and in pursuance with a general understanding among them?

125 (Objected to by M'r Merrick as irrelevant and already answered.)

A. I have answered that once; I stated that I did.

Q. When you left the market July 1, what fixtures did you leave there, to which you have alluded?

(Objected to by M'r Merrick as irrelevant, and all questions as to butchers leaving the market objected to as irrelevant to Hoffman's case.)

A. My corn-beef tray; also money-drawer, and my name, my sign.

Q. What was your sign?

A. "Theodore Barnes."

Q. Was it your name painted on the stall which belonged to the Market Company?

A. It was my name painted on the stalls belonging to me, which I bought and paid for.

Q. You mean which you bought and paid for by the bonus at the auction sale made in 1872, do you not?

A. Yes, sir.

Q. You allude to no other purchase or payment, do you?

A. I allude to the bonus and the rents that I paid the Market Company.

Q. You have alluded on direct examination to offers to pay rent to M'r Smith by other dealers than yourself; were you present when any such offers were made? If so, state when and by whom they were made.

A. Yes, sir; I was present when M'r George Oyster agreed to pay his rent if the company would give a receipt for the rent; the clerk of the company, M'r Smith, refused to take the money for rent, and he put his money back in his pocket; I was also present when M'r E. Brook offered to pay his obligations to the company (that was about eight or nine weeks ago), if the company would give a receipt for rent; the clerk would not give him a receipt for rent.

Q. Did you know of any other offers to pay rent than those above stated when you were present?

A. Yes, sir; M'r J. J. Lightfoot sent his money by my clerk, W'm Kidwell, at the same time I did; that was just a few weeks after the decision in the Hoffman injunction case.

Q. Were you present when M'r Kidwell made any offer of the Lightfoot money to the company?

A. No, sir; but I can prove that he did offer to pay my rent, and also M'r Lightfoot's, as he was instructed to pay for us both. The clerk told him at the time that the company were not receiving any money for rent at that time.

126 (All of the answer except the first two words objected to by M'r Chandler, and the examiner is requested to instruct the witness not to state what he can prove nor what has been told him.)

Q. On the occasion of the offers which you have stated when you were present, did not M'r Smith offer to receive the money and give a receipt therefor, in the form annexed to your deposition, marked T. B., No. 1?

A. That was one form of receipt, but I would not pay my money on that receipt. I demanded a receipt which should be in the form of the exhibit marked T. B., No. 2, which is the receipt the company always gave to me when I paid my rent previous.

Q. My inquiry was designed to have you state whether or not M'r Smith made the same offer of a receipt in the other cases besides yours to which you have testified.

A. Yes, sir; he did.

Q. At these offers, in what cases was the money actually produced and shown to M'r Smith, the clerk, when you were present?

A. My own and M'r Oyster's. M'r Brooks also stated that he was ready to pay his if the company would give a receipt for rent.

Q. What exhibition was made by you of your money; in what shape was it and to what amount?

A. I had my pocket-book in my hand, with plenty of money in it. I ran the bills on one side over with my fingers to let M'r Smith see that I had plenty of money to pay every obligation to the Market Company if he would give me a receipt for rent, and he refused.

Q. Are you sure that M'r Smith saw or might have seen the bills from which you proposed to pay?

A. If he had the sight of his eyes he couldn't have helped seeing the money.

Q. Where did you place your pocket-book; how show it to M'r Smith?

A. My pocket-book opens in the centre, where I keep my large bills; I held it before M'r Smith, and ran the bills over with my fingers.

Q. Did you offer M'r Smith any particular sum of money, or separate any such sum from the money thus exhibited in your pocket-book?

A. I did not at that time, but I sent my rent for the stands for three months by my clerk in advance, just after the granting of the injunction by the court, to prevent the company from selling the stands.

Q. Was that sending by M'r W'm Kidwell previously stated in your deposition?

A. It was; it was the same.

Q. Where is M'r Kidwell's present residence?

A. He is still employed by me as clerk, and resides in Georgetown.

127 Q. Are you responsible for the counsel fees and other expenses of litigation in this suit?

A. I pay my part.

Q. What is that part, and under what agreement or arrangement do you pay it?

A. I have never paid any particular sum at any time. We agreed to pay our counsel to protect us from this corporation.

Q. Including in that protection the prosecution of the present Hoffman suit?

A. Yes, sir.

Q. Is the agreement oral or in writing; if the latter, how many and what persons signed it?

A. It is in writing, giving M'r Merrick, our counsel, the power of attorney to act in our behalf; I am one of that party; there was a hundred, I think; I don't know who they are.

Q. State whether or not the butchers generally signed that paper.

(Objected to by M'r Merrick as irrelevant, having nothing to do with the case, except in so far as showing the relation in which the witness stands to it, which is already proved.)

A. About one hundred dealers signed it; I do not know whether they were butchers or not.

Q. Did not the butchers generally, as a trade, sign the agreement, according to the best of your knowledge and belief?

(Objected to by M'r Merrick as irrelevant.)

A. I don't know.

Q. Do you know any butchers who did sign? If so, name them.

(Objected to as irrelevant and an unnecessary consumption of time by M'r Merrick.)

A. I know of M'r E. Brooke, M'r James Hoffman, and M'r B. F. Hunt; I think they are on that list; I do not know for certain who the other parties are.

Q. Do you know of any butchers who did not sign? If so, name them.

(Objected to on the same grounds as above.)

A. It is impossible for me to say, because I don't know.

Q. Did you pay money for expenses of litigation under that agreement?

(Objected to by M'r Merrick.)

A. I did.

Q. Will you procure that agreement, or a copy thereof, and allow a copy to be annexed to your deposition?

A. I don't know whether I could procure it or not.

128 Q. Will you consult with the counsel and communicate to them the request now made of you to procure a copy of the agreement for annexation to your deposition?

(Counsel for the plaintiff, now present, states that if consulted upon the subject of the question, he shall state that it has relation to a matter that is none of M'r Chandler's business.)

A. Yes, sir.

Q. State whether or not you are a stockholder in the K street market.

(Objected to by M'r Merrick as irrelevant.)

A. I am.

Q. To what amount?

(Objected to as irrelevant, and counsel advises witness that his answer is discretionary.)

A. I've got a hundred and ten shares.

Q. What amount did you pay in thereon?

(Objected to as above, and the same advice of counsel given.)

A. Twenty-two dollars and fifty cents a share has been paid in.

Q. Do you own bonds of the K street company; if so, to what amount?

(Objected to.)

A. I do not.

Q. Are you liable for any of its debts?

(Objected to as above.)

A. I am.

Q. To what amount?

(Objected to, and witness advised as above.)

M'r Merrick, at this point, objects to the witness answering the last preceding question, and desires that it be referred to the court to determine whether the witness shall be required to make answer thereto.

Thereupon the further taking of testimony was adjourned until Friday, the 21st day of May, to meet at the same place and hour (12 o'clock m.)

T. A. LAMBERT, *Examiner.*

FRIDAY, *May 21st.*

Met pursuant to adjournment. Present, R. T. Merrick and R. K. Elliot, esqrs., counsel for complainant; whereupon the further taking

129 of testimony was adjourned until Monday, the 24th day of May, A. D. 1875, at the same place and hour.

T. A. LAMBERT, *Examiner.*

MONDAY, *May 24th*, 1875—12 o'clock m.

Met pursuant to adjournment. Present, R. T. Merrick, esq., and R. K. Elliot, esq., counsel for complainant; whereupon, the witnesses not being in attendance, the taking of testimony was further adjourned until Tuesday, the 25th inst., to the same place and hour.

T. A. LAMBERT, *Examiner.*

TUESDAY, *May 25th*, 1875.

Met pursuant to adjournment. Present, R. K. Elliot, esq., counsel for complainant; William Birney, esq., of counsel for the defendant, and the witness Theodore Barnes; whereupon the cross-examination of the said witness was resumed as follows by Gen. Birney:

Q. Did you purchase the perpetual right to any stalls in the K street Market at the public sale thereof?

(Objected to as especially ruled upon by the court in its decisions upon the questions certified.)

Q. I will add to the question, to show my motive in asking it, If so, what bonus did you pay for it, or agree to pay for it?

(Objected to by M'r Merrick, who requests that its relevancy be referred to the court, if insisted upon. General Birney, counsel for defendant, insists upon the question being answered; whereupon the examiner is requested by counsel for complainant to certify the matter to the court.)

Q. Did you purchase stalls in the Center Market at the auction sales in 1872; if so, how many, and what bonus did you pay?

A. I purchased two stalls, two butchers' stalls, Nos. 599 and 600. I don't remember what I paid. It was between $500 and $600. I am not certain, but I think it was about that amount. I haven't got any papers, but will refer and state the exact amount.

Q. What is the name of the association of market dealers of which you have testified you are a member?

A. Dealers' Protective Association; I think that is the name of it.

Q. Is or was B. S. Elliot the secretary of that association?

(Objected to by M'r Merrick.)

A. He is at present secretary.

130 Q. Are its members generally, or many of them, stall-holders or stockholders of the K-street Market?

(Objected to by M'r Merrick, who asks that it be referred by the examiner to the court, if insisted upon. It is insisted upon, whereupon the examiner refers it under certificate.)

Q. Have the market-dealers, or any of those associated with you, demanded of the defendant, as a condition of payment for rent of stalls held in Centre Market, the closing of the latter market three days in the week, on which days market is held in the K-street Market?

(Objected to by M'r Merrick.)

A. I have heard——

(Hearsay evidence objected to by M'r Merrick.)

I know nothing of the matter definitely—personally I mean. There was agreement. I don't know anything at all about the matter in that regard; nothing positive about it.

Q. Were you present at any meeting of market-dealers when it was

agreed that a demand, substantially as last above mentioned, should be made upon the Washington Market Company?

(Objected to by M'r Merrick, and reasons assigned as above.)

A. I believe there was a demand to that effect made by a meeting of the dealers, but I don't remember of being present.

Redirect by M'r Merrick:

Q. How do you know that such a demand was made?

A. I think there was a committee appointed to adjust difficulties between the Market Company and the dealers. I don't remember how this committee was instructed, but I think that that was part of their instruction by the meeting.

Q. How do you know this?

A. I don't know positively.

Q. Was not that committee appointed to compromise with the Market Company through the counsel of the dealers?

A. I think this occurred previous to the dealers employing any counsel.

Q. When did it occur?

A. I have no positive recollection.

Q. Was it after the bringing of this suit in the name of Hoffman?

A. I think it was just before—just a little before; am not positive.

Q. How long before?

A. I do not remember.

Q. How many days?

A. I couldn't say.

Q. Who presided at that meeting?

A. I don't know anything at all about it.

131 Q. Who was secretary?

A. I don't know.

Q. Was M'r B. S. Elliot one of the committee; and if not, who were on the committee?

A. I don't remember about M'r Elliot, but I think M'r Robert Smith was one of the committee—so I was informed.

Q. Was this before or after the stalls had been advertised for sale last July?

A. I don't remember.

Q. When did the question about paying rents first arise and become a subject of discussion among the dealers; was it not after the Market Company refused to accept rent as such, or to give the receipts like the old receipts they had been in the habit of giving?

(Objected to by Gen. Birney as leading.)

A. It was after that time.

THEODORE BARNES.

Adjourned until Wednesday, the 26th inst., to meet again at the same place, and at the hour of 3 p. m.

T. A. LAMBERT,
Examiner.

WEDNESDAY, *May* 26, 1875.

Met pursuant to adjournment. Present, R. K. Elliot, esq., of counsel for complainant; W'm Birney, esq., of counsel for defendant, and the witness, Benjamin F. Hunt, who was thereupon, after being duly sworn, examined in chief by M'r Elliot, as follows:

BENJAMIN F. HUNT.

Q. State your place of residence and occupation.

A. Georgetown Heights. I am a butcher in the Centre Market and Northern Market—K-street Market.

Q. How long have you occupied a stand in the Centre Market?

A. Since October, 1865—the 16th of October.

Q. Who occupied that stand prior to that time?

A. I purchased the right from M'r Thomas Weaver.

Q. How long had Thomas Weaver occupied it?

(Objected to by Gen. Birney.)

A. I can't state of my personal knowledge, but I think, from hearsay, fifteen or twenty years.

Q. Did you succeed M'r Weaver in business at that stand?

A. I did, sir.

Q. State whether you were occupying a stall in that market at the time the buildings were destroyed by fire.

(Objected to by Gen. Birney.)

132 A. I was; I had a stall there at the time of the fire.

Q. After the destruction of these buildings by fire was there any provision made for the accommodation of the market-dealers?

(Objected to.)

A. Yes, sir; there was.

Q. What provision was made?

A. The building of temporary sheds.

Q. By whom, or under whose authority?

A. I am not sure, but I think it was under authority of the Market Company.

Q. Do you recollect about the date of the construction of those buildings—the temporary sheds?

(All questions on this subject objected to.)

A. I think it was pretty soon after the burning of the market.

Q. Did those sheds remain on the ground in the occupancy of the dealers during the construction of the present market-buildings?

A. They did.

Q. Whilst you were occupying a stall in those temporary sheds, and pending the construction of the present market-buildings, did you preside over a meeting of market-dealers, convened for the purpose of conferring with the officers of the Market Company, or had you any connection with or knowledge of such a meeting?

A. I did.

Q. State whether you were a member of a committee appointed by that meeting to confer with officers of the Market Company in respect, among other things, of the rights which the occupants or purchasers of stalls in the new market-building would be entitled to.

(Objected to by Gen. Birney as incompetent to vary the meaning of an express contract subsequently entered into, and as not being confined to the board of directors of defendant.)

A. Not during my occupancy in the sheds, but prior to that. I presided at the meetings, but was not on a committee in regard to the right of stalls in the new building after we occupied the sheds. It was between the date of the destruction of the old market and the building of the sheds.

Q. Where was that meeting held?

A. At the "Trades' Union Hall."

Q. What was the object of the meeting?

133 A. The first meeting called was for the purpose of coming to some agreement to attend markets. At that meeting there was no conclusion come to as to what to do. We adjourned, and met

the following day. There was a committee appointed to meet a committee of the Market-House Company by the request of the latter. They met that committee.

(Answer objected to as irrelevant by General Birney, also incompetent.)

Q. Who constituted the committee on the part of the Market Company?

A. M'r A. R. Shepherd, M'r Smoot, M'r Davis, M'r Cluss; I think M'r Ordway, also, but am not positive.

Q. When did that committee meet the market-dealers, or the committee appointed by them?

A. At the Board of Trade room.

Q. Did the market-dealers' committee and the committee of the Market Company hold a conference at that meeting?

A. They did, and I was present.

Q. State what, if anything, was said by the committee on behalf of the Market Company, or any member thereof, in respect to the rights of those who might purchase stalls in the new market-building.

(Objected to.)

A. I think I asked the question myself, in the event that I should purchase the stall in the proposed new market, How long would the right to them be vested in me? M'r Shepherd replied: "The right, sir, shall be in you, your children, and children's children." My reply: "I can now go home, sir, sleep sounder, and better satisfied."

At this point the further examination of the witness, at the instance of counsel for complainant, is suspended until to-morrow, Thursday, the 27th instant, at 11 o'clock a. m., to which time the taking of testimony is adjourned.

T. A. LAMBERT,
Examiner.

THURSDAY, *May* 27, 1875.

Met pursuant to adjournment. Present, R. K. Elliot, esq., of counsel for complainant; W'm Birney, esq., of counsel for defendant, and the witness, Benj. F. Hunt, whose examination-in-chief was thereupon resumed, as follows:

Q. State whether you purchased the right to occupy a stall or stalls in the Centre Market at the auction sale in 1872; if so, what are the numbers of the stalls you purchased?

134 A. I did, sir; the numbers were 566, 567, and 568, on the first day of the sale.

Q. State whether you paid the rent charged by the company from July, 1872, to July, 1874.

A. I did, sir.

Q. Did you receive from the company receipts for such payments?

A. I usually did, sir.

Q. Have you those receipts, or any one of them, now with you?

A. No, sir, but I have them at home; generally paying in checks, I took no notice of receipts.

Q. Between the dates that I have just mentioned did the company make any reduction in the amount of your stall-rent as originally fixed and first paid by you?

A. They did, sir.

Q. What reduction did they make, and under what circumstances was it made?

(Objection is made by General Birney to all questions on this subject of reduction, unless the action of the board of directors of the company, or other authority competent to reduce rents, shall be shown.)

A. Twenty per cent., sir, was the reduction, I think, as near as I can remember, generally for payment in advance.

Q. What amount of rent per month was charged to you for the occupation of your stalls during the whole period I have mentioned?

A. Forty-two dollars a month, sir.

Q. What do you mean by the word "reduction" in your preceding answer?

A. I mean the discount of twenty per cent. for prompt payment in advance.

Q. Between the 1st of January, 1873, and the 1st of July, 1874, did the company make any other reduction in the amount of rent originally fixed and charged for the use of your stalls?

A. No, sir.

Q. Did they at any time prior to the 1st of January, 1873, make any reduction other than the twenty per cent. for prompt payment, of which you have spoken?

A. They—I don't remember, sir.

Q. Has the company, since the 1st of July, 1874, made any reduction in the amount of rent for the use of your stalls?

A. They have not, sir; they were not willing to receive rent.

(Counsel for defendant states that witness is mistaken on this point.)

Q. State whether, since the 1st of July, 1874, you have tendered to any officer of the defendant company rent, the same as you paid prior to that time for your stalls; if yea, give the name of the officer, and state when and how often you made such tender, or expressed to said officer a readiness to pay your rent.

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A. On the 23d of March I sent a check to M'r Smith for $126, in full for rent to Sept. 30, 1874. Said check was returned with the reply that they would not accept it unless I struck out the word rent.

Q. Why did you not tender the check for rent to September 30, 1874, before the 23d of March, 1875?

A. It was generally understood that they wouldn't receive rent.

Q. Understood by whom?

A. Well, by the dealers; by me, at least; by dozens; I couldn't tell the names of all.

(Testimony as to general understanding objected to by General Birney.)

Q. Between the 1st of July, 1874, and the present time, has any officer of the company made demand on you for rent of your stalls, the same as prior to that date?

A. They have demanded of me the amount equal to rent, but would not give a receipt for rent.

Q. When did you next, after the 23d March, 1875, tender the company anything on account of rent?

A. April 8, 1875. Not willing to receive my check in full for rent I drew a check for $100 on account of rent. M'r Bayley, an officer of the company, refused the check. He said, "Draw me a check as a check is ordinarily drawn and I will accept it." I asked him why not accept the one just handed him. His answer was, "Because the word rent is written on it." I then said: "Go and make me a bill of the whole amount due you to date, and I will pay you." He said he could not do it. I asked why. His reply was, on account of this suit pending.

Q. Did you ever demand from any officer of the company, as a condi-

tion of payment of rent, any receipt different from that which you received between the 1st of July, 1872, and the corresponding date in 1874?

A. I have not, sir.

Q. Look at the two checks signed by you, and dated, respectively, March 23 and April 8, 1875, and state whether they are the checks tendered to M'r Smith and to M'r Bayley, and whether you generally paid your stall rent by checks from the date of your purchase in 1872.

A. They are the identical checks which I tendered, and I generally paid my rent by check from the time of my purchase, in 1872; sometimes, but seldom, in money.

136 (Said checks are herewith returned, marked, respectively, Exhibit B. F. H., 1, and B. F. H., 2.)

EXHIBIT B. F. H., 1.

No. .] WASHINGTON, *March* 23, 1875.

Riggs & Co., pay to S. P. Smith, or order, one hundred and twenty-six dollars, in full for rent to September 30, 1874.

$126. BENJ. F. HUNT.

EXHIBIT B. F. H., 2.

WASHINGTON, *April* 8, 1875.

Riggs & Company, bankers, pay to P. S. Smith, or order, one hundred dollars, on account of rent.

$100. BENJ. F. HUNT.

Q. State whether any officer of the company prior to the 1st of July, 1874, ever refused to accept your check in payment of stall rent?

(Objected to by Gen. Birney.)

A. They did not, sir.

Q. Look at the check now handed you, and dated May 21, 1874, and state to whom it was delivered, and for what purpose, and whether it has been paid or not?

A. It was delivered to M'r Lafferty, an officer of the company collecting rent, for rent to April 1, 1874; the check was paid; the last indorsement on it is "P. S. Smith, clerk."

(The check is herewith returned, marked Exhibit B. F. H., No. 3.)

EXHIBIT B. F. H., 3.

[2-cent internal-revenue stamp.]

No. .] WASHINGTON, D. C., *May* 21, 1874.

Riggs & Co., pay to P. S. Smith, or order, one hundred and one dollars, in full to April 1, '74, with per ct. off.

$101. BENJ. F. HUNT.

A. I don't remember whether I received any receipt for the money paid on this check.

Cross-examined by Gen. Birney:

Q. In your testimony-in-chief you speak of one or more meetings of the market-dealers, at which you presided; was there a secretary of said meeting; if so, who was it?

A. There was; George Yeabower.

Q. Did he keep a record of the proceedings; if so, where
137 are those proceedings?

A. I do not know whether he kept a record.

Q. On whose resolution was the committee of which you speak appointed; was that resolution in writing?

A. On the resolution of G. M. Oyster. I don't remember whether it was in writing.

Q. Was a public notice given of the first meeting held at Trades' Union Hall?

A. I think there was, sir; in the newspapers.

Q. Did that express the object of the meeting?

A. I don't remember.

Q. Have you a copy, or can you produce one?

A. I have not, and can't tell whether I can produce one or not.

Q. Who were on the committee of market-dealers appointed at that meeting?

A. G. W. Emerson, Geo. M. Oyster; I think Richardson, the bacon dealer; myself. I think B. S. Elliot.

Q. Did your committee make a report to the market-dealers?

A. I think we did, sir.

Q. Was it in writing?

A. No, sir.

Q. Was the request of the Market Company for a meeting of committees in writing?

A. I don't remember.

Q. Was it made in person to the market-dealers?

A. Through M'r Oyster.

Q. Then your only knowledge of the request from the Market Company was the verbal statement from M'r Oyster?

A. My only knowledge was from the Market-House Company committee meeting us.

Q. Did the persons you name as a committee on the part of the Market Company constitute the board of directors of that company?

A. A portion of them, I think; the rest of the building committee, I think.

Q. Which ones were directors at that time?

A. I think that M'r Shepherd was, but am not positive; I think that M'r Smoot; I think M'r Davis.

Q. Who was on the building committee?

A. I think M'r Cluss; I think M'r Ordway.

Q. What authority in writing, if any, was exhibited by these gentlemen to show that they had the right to speak for the board of directors of the Market Company?

A. We didn't question their authority, sir; thinking they were gentlemen: they exhibited no authority in writing, to my knowledge.

138 Q. Had you, as president of the market-dealers' meetings, received any notification from the board of directors that the gentlemen you have named were their committee and had a right to bind the company by their declarations or otherwise?

A. M'r Oyster, I think, named who the committee would be; I received no such notification.

Q. Was any formal arrangement between the conference committees reduced to writing?

A. I think M'r Cluss was the secretary; I don't remember whether any formal conclusion was reduced to writing.

Q. Was any formal arrangement made between the two committees? If so, state precisely its terms, and whether it was signed.

(Objected to because it calls for the contents of a written document.)

A. There was an arrangement made. I don't remember of its being put upon any paper. We were to go and occupy sheds to be erected by the Market-House Company.

Q. Was that the entire agreement, as made between the two committees? If not, state what else.

A. It was not; we agreed that no sheds or stalls or stands should be built on Eighth street; I mean temporary stalls.

Q. Was that all the agreement entered into?

A. As far as I remember.

Q. Was not the sole object of this meeting to make an arrangement for the occupation by the market-dealers of temporary sheds to be erected by the company?

A. Principally, it was.

Q. Have you paid, in full, your stall rent from July 1st, 1872, to July 1st, 1874, at the rate of $42 per month for the three stalls?

A. I have, with the discount off when allowed.

Q. Do you mean the discount of 20 per cent. when paid in advance at the beginning of the quarter?

A. I have had the discount off after due.

Q. When?

A. The 21st of May, 1874.

Q. Some time after that payment, did you or not have a conversation with M'r Smith, clerk of the market, in relation to it, in which he claimed that your account had not been paid, and that the said check had slipped through by mistake on his part, and that the books of the company showed only a payment at that date on account?

A. I had a conversation with M'r Smith. He claimed that I owed him money. I denied owing it, telling him I had a receipt in the
139 way of a check. He said I had no such check. He desired me to bring it and show it to him. I replied that I would not do so; that my word was as good as his.

Q. Did he not tell you at that time that the original entry made by him at the time showed only so much money paid on account?

A. No, sir; not in those words. He claimed that I owned him $25.

Q. What other payment, to your knowledge, was ever accepted by the Market Company after the first ten days of the quarter with a deduction of 20 per cent. on the amount due? If so, state it.

A. None, of my personal knowledge.

Q. Have you not fully understood that the Market Company has been willing at all times to receive from the market-dealers the amount of rent fixed upon their respective stalls, provided it could do so without admitting away its rights to a resale, as asserted in its defence in this case?

A. I have not understood it so at all times, sir.

Q. Have you not for some time past so understood it?

A. Yes, sir; a short time past.

Q. Have you not heard that repeatedly declared by counsel for defendant in this cause?

(Objected to by M'r Elliot as incompetent, hearsay.)

A. Never but once.

Q. Do you not know that demands have been made upon the market-dealers who are interested in this cause, repeatedly, and from time to time, for the amounts due by them to the Market Company?

A. The demand has been made often on me, offering to pay, as my checks will show.

Q. Have you authorized your name to be used as one of the plaintiffs in this cause?

A. I suppose so.

Q. If your check, as written, had been received by the company, would you not have claimed that that act on their part was an admission of your right to hold permanently your stalls by virtue of your two years' purchase from July 1, 1872?

(Objected to by M'r Elliot, because it asks an expression of the witness' opinion on a question of law involving defendant's charter.)

A. I gave the check with no such view, merely writing the word "rent," to show what the check was for, and to hold such as a receipt. I wait for the court to decide that.

At this point the cross-examination of the witness was sus-
140 pended, and an adjournment declared until Friday, the 28th day of May, to meet at the hour of 11 a. m., at the same place.

T. A. LAMBERT,
Examiner.

FRIDAY, *May* 28, 1875.

Met pursuant to adjournment, whereupon, at the instance of counsel for defendant, General Birney, whose engagements did not admit of his attendance, the taking of testimony was further adjourned until Saturday, the 29th instant, at 2 o'clock p. m.

T. A. LAMBERT,
Examiner.

SATURDAY, *May* 29—2 p. m.

Met pursuant to adjournment. Present, R. K. Elliot, of counsel for complainant, and the witness, Benjamin F. Hunt; whereupon, the counsel for defendant not being in attendance, the further taking of testimony was adjourned until Monday, the 31st instant, at 12 o'clock m., at the same place.

T. A. LAMBERT,
Examiner.

MONDAY, *May* 31, 1875.

Met pursuant to adjournment. Present, R. T. Merrick and R. K. Elliot, esq'r's, counsel for complainant, and W'm Birney, esq., of counsel for defendant, but no witnesses; whereupon the further taking of testimony was postponed until Wednesday, the 2d day of June, A. D. 1875, at 11 o'clock a. m.

T. A. LAMBERT,
Examiner.

WASHINGTON, D. C., *June* 2, 1875.

Commission met pursuant to adjournment. Present, counsel on either side. The examination of witnesses was proceeded with, as follows:

Deposition of Thomas J. Murray, for the plaintiff.

THOMAS J. MURRAY, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, touching the matter in controversy, deposes and says:

Examined by M'r Merrick:

141 Q. State your age, residence, and occupation?

A. I am 32 years of age; I reside in the District of Columbia, and am a newspaper reporter.

Q. In what business were you engaged in December, 1870, and if you were then acting as a reporter for any newspaper, state what paper?

A. At that time I was acting as the reporter for the Daily Patriot, of Washington, D. C.

Q. Did you, as a reporter for the Daily Patriot, in December, 1870, attend any meeting held between the dealers in the market and the Market Company, or a committee of the dealers of the market and the Market Company, and if you did so attend any meeting, did you make any report thereof for the Patriot?

A. I believe I did.

Q. Look at the paper now shown you, and state whether the report which is published in said paper, which paper purports to bear date December 31, 1870, is a report prepared by you of the meeting referred to in the interrogatory?

A. The report is in my style of reporting; at the time I had charge of the controversy between the market-dealers and the Market Company; I made all the reports.

Q. Did you make that report?

A. I am almost positive I did.

Q. Do you recollect attending that particular meeting?

A. I cannot recollect the place of meeting, but the tenor of the report I do.

Q. Do you refresh your recollection by reading the paragraph that is marked in the report to the following effect: "M'r Shepherd stated that those parties who took stalls in the permanent building would receive a vested title therein, which they could hand down to their children;" and having refreshed your recollection by looking at that clause of the report, state whether or not you recollect that anything of the sort transpired?

A. It was four years ago, and, of course, I cannot be positive, but my impression is, and my recollection is, that that remark was certainly made; and moreover, considering that I only reported what was said, as was my custom, I am almost positive that M'r Shepherd made the remark.

Cross-examination by M'r Birney:

(M'r Birney stated before proceeding with the examination that he desired an objection to be noted to the questions and answers preceding as incompetent.)

142 M'r Merrick desired it noted that the papers shown witness, and in regard to which he had been interrogated, is Exhibit D to the amended bill.)

Q. How many reporters were engaged on the Daily Patriot at that time?

WITNESS. Do you mean local reporters?

COUNSEL. Yes.

A. You might say that there were four local reporters.

Q. Who were they?

A. M'r Samuel V. Noyes, A. B. Talcot, M'r Wells—I foget his first name; he was court reporter; he hardly ever did any local work; and M'r Dunn.

Q. Look at the copy of the Daily Patriot which has been shown you,

at the article headed "Meeting of the Market Dealers," and state whether you attended and reported that meeting or not.

A. I cannot swear positively that I was there, but the tenor of the article, the style of the article—every reporter has his style, and this is my style—induces me to think I wrote it. I cannot recollect whereabouts the meeting occurred, it is four years ago, but I know that is my article. I do not believe that I reported anything wrong in it.

Q. Your opinion is founded entirely from the style of the article?

A. Not exactly; I mean to say that I had the charge of the report of the market-dealers' meetings with the company. At that time there was a controversy between the Market Company and the market-dealers, and I was, in a measure, detailed to go and attend to it. This article which M'r Merrick showed me I recognize also as my style, but I could not swear point blank as to the circumstance, because it is four years ago, and I cannot recollect were it occurred, or who were the parties present. I took no note of it at the time, and you may imagine, in the pressure of the reporter's business, that he could not swear to it; but still I do say that I recollect plainly that fact that was stated there about the vesting of the title in the market-dealers. I recollect that plainly. When it was called to my attention it was the first time I had seen the paper for four years.

Q. Where did the meeting of the market-dealers take place?

A. Two or three meetings of the market-dealers took place at what is now known as Sangerbund Hall, at the corner of Eighth and E streets.

Q. Where did the meeting of the committees of conference take place?

A. I cannot recollect, and I told M'r Merrick this morning I
143 could not. I cannot recollect. I know very well I was running the whole machine, but I will swear this is, to the best of my belief, my report.

Q. Do you remember to whom M'r Shepherd made the remark attributed to him?

A. I say if M'r Shepherd made it—I am going now simply on my recollection of my report—I do not recollect where it was, nor can I swear that he made it.

Q. Then you cannot swear that M'r Shepherd or any other particular person made it?

A. I do swear, point blank, it was made there by him or M'r Ordway, to the best of my recollection.

Q. Can you give us the circumstances under which any person made the remark?

WITNESS. The circumstances?

COUNSEL. Yes.

WITNESS. What do you mean by the circumstances?

COUNSEL. The context of the conversation.

A. Yes, sir; I can in this way. I can give you this: that the market-dealers had been called together.

Q. No; but who spoke before that, and who spoke after that?

A. Now, if you are going to ask me that, I cannot tell you; as I told you, I do not recollect that meeting.

Q. You do not recollect the meeting?

A. I do not. I do not recollect where it was, but I can say that as far as a reporter can say anything about a meeting that occurred four years ago, and that he took no note of, and which passed out of his mind, as it were, entirely, that when this article was shown me I recollected

at once that it was my report, and then I recollected that section there.

M'r MERRICK. Which section?

WITNESS. I say this section, and I have every reason to believe, because I report, that I reported it fairly—I had no interest one way or another, and never thought the matter would come up again—that M'r Shepherd stated that those parties—I quote from the paper—that those parties who took stalls in the permanent building would receive a vested title therein, which they could hand down to their children.

Q. Can you state the remark to which this remark of M'r Shepherd's was made as an answer?

A. I cannot, for I do not recollect.

Q. Do you recollect who spoke to him?

A. I do not. There was a large crowd of market-dealers I know at the time, and I cannot place the meeting. That is the whole amount of it.

144 Q. Do you mean to state that that report is a verbatim et literatim report of what was said by M'r Shepherd or M'r Ordway?

A. No, sir; I do not. I simply say that this is a reporter's report; not a verbatim report.

By M'r Merrick:

Q. I understand you to state that you recollect distinctly attending a meeting between the market-dealers and the market-men, at which it was stated by M'r Shepherd that when they bought the stalls in the new market-house they would acquire a vested right for them and their children?

A. No, sir; I did not say so. I say this: I can only recapitulate what I said before, that at that time I was detailed to attend to the controversy between the market-dealers and the Market Company. I recollect distinctly that I reported that meeting referred to there in the paper that you showed me. I recollect what was said there, thinking over the matter after it was called to my attention. I am positive that either M'r Shepherd or M'r Ordway made that remark with regard to the vesting of title in those who should purchase stalls. Looking at my report, I am positive, almost as positive as a reporter can be about a matter that happened four years ago, that M'r Shepherd was the man who made that statement.

THO'S J. MURRAY.

Sworn and subscribed to before me this 2d day of June, A. D. 1875.

T. A. LAMBERT,
Examiner in Chancery.

Deposition of Thomas Berry, for plaintiff.

THOMAS BERRY, being of lawful age, and being by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matter in controversy, deposes and says:

Examined by M'r Merrick:

Q. State your name, age, residence, and occupation.

A. My name is Thomas Berry; I am 65 years of age; reside on M street in this city, 906.

Q. Are you one of the corporators named in the original act of incorporation of the Washington Market Company?

A. I was.

145 Q. Did you ever act under that act; take part as a corporator under the bill that was passed?

A. Yes, sir; I attended one or two meetings after the bill passed, and at those meetings, the first meeting after the bill had passed, there was a proposition that a certain number of gentlemen were to receive a certain number of shares of stock for their services. I thought if these gentlemen were to receive the stock for nothing for their services, where is the money to come from to build the market-house.

(Objected to by M'r Birney as irresponsive to the question.)

After talking with some friends, to some of the incorporators, they said they would have nothing to do with it; that the intention was that the gentlemen whose names as incorporators to build the market-house, as Mayor Bowen said he could not build it without money; we were willing to put up money; subscribe towards building this market-house. Being interested in the property in that neighborhood, I was willing to subscribe something towards the erection of the market-house.

Q. Did you have anything further to do with it?

A. No, sir; not afterwards.

Q. Why didn't you?

A. Because I thought it was an imposition upon the community; if these men were to receive so many shares of stock the building would cost twice, or maybe three times, as much as it ought to cost; because, as I understood, this stock was to be given to these men without any compensation.

Q. Were there any other corporators named in the bill who refused to act, and who so refused to act, assigning as a reason, imposition on the corporators and the public?

A. Yes, sir; M'r Riggs. I went to see M'r Riggs and stated my opinion, and asked him——

(Objected to by M'r Birney as not touching any act done by the present company.)

I went to him and asked his opinion, and his opinion concurred with mine. He would not have anything to do with it.

Q. Did you and he agree it was an imposition upon the public and the dealers?

A. Yes, sir.

(All this testimony objected to by M'r Birney.)

Cross-examination waived.

146 WASHINGTON, *June* 9, 1875.

Redirect examination of M'r Hunt.

By M'r Elliot:

Q. State fully the object of the meeting in December, about which you have testified on your cross-examination. I refer to the meeting of the committee of market-dealers and the committee of the market company, in December, 1870?

A. To the best of my recollection, it was to settle or amicably adjust the difference between the market-dealers and the company.

Q. All differences then existing?

M'r BIRNEY. I object to this as not proper on redirect examination.

A. They had in contemplation, at the time, building a market for the dealers. A committee was appointed for that purpose, and after the conference the committee was dissolved. A committee of dealers were appointed for this purpose and to purchase grounds, and after the meet-

ing of the conference committee it was abandoned, and the committee of dealers dissolved.

Q. The purpose to build a new market was abandoned?

A. Yes, sir.

Q. So far as you now remember, were the dealers satisfied with the declaration of M'r Shepherd as to their rights in the new market building?

A. As far as I know, it was received with general satisfaction.

(Question objected to by M'r Birney.)

Q. State whether M'r William E. Chandler was, according to the best of your recollection, present as one of the committee on behalf of the market company in December, 1870?

A. I think he was.

(Objected to by M'r Birney.)

Q. You have stated in your cross-examination that for a short time past you have understood that the market company has been willing to receive rent for the use of the stalls if it could do so without admitting away its rights. Please state exactly what you mean by that answer.

(M'r Elliot then proceeded to read from the testimony of the witness, to which he referred in the question.

M'r Birney objects to the reading from the cross-examination, and asking questions upon that.)

A. What I understood was, that they were not receiving money in rent.

147 Q. Was that what you meant in your answer in cross-examination?

A. As far as I remember. I have been willing to pay rent at all times.

Recross-examination by M'r Birney:

Q. When you say that you are willing to pay rent, as rent, you meant that you are willing to pay upon your contract as you claim it in this suit, did you not?

M'r ELLIOT. I object to the question, unless the contract referred to shall be first specifically indicated.

A. My checks will show that I have tendered rent.

M'r BIRNEY. Please answer the question.

A. I am willing to be governed by the decision of the court.

Q. If you are willing to be governed by the decision of the court, what objection could you have had to the receipt tendered you by the company, which did nothing more than save the legal rights of both the dealers and the company?

(Question objected to by M'r Elliot as giving the opinion of counsel as to the effect of the receipt and to the form of the question.)

A. They tendered me a receipt. They objected to my checks on account of the word rent being written in them.

Q. Look at Exhibit H, and state whether that was not the receipt which the company always professed itself to be willing to give.

A. I have a number of receipts written entirely different from this, for rents, specifying the word rent.

Q. Do you know anything whatever about Exhibit H, which I now show you?

A. I think I have seen it, but I am not positive.

Q. Did you ever have any conversation with the clerk of the company as to the kind of receipt they would give?

A. I do not remember that I had.

Q. Was not the object of that meeting of conference between the

market dealers and market company in December, 1870, the rebuilding of the temporary sheds, and the terms to be given to the dealers for the stalls taken by them in those sheds?

A. That was a part of the understanding.

Q. Did the dealers at that time enter into an association to build another market-house; and, if so, where were they to build?

A. There was a committee appointed. After this conference meeting that committee was discharged.

148 Q. You mean that there was a committee appointed to build a market-house?

A. To inquire into the expediency of purchasing grounds and building a market-house.

Q. What other step was taken toward building a market-house?

A. None other after this conference committee.

Q. Had any negotiations been entered into for the purchasing of land; and if so, where and with whom?

A. Not to my knowledge.

Q. Who were the members of the committee of inquiry in regard to the purchase of land for building a market-house?

A. I cannot remember them now. I appointed the committee myself. I was one; I think M'r Oyster was one. I am not sure. There were five on the committee.

Q. What steps did the committee take to carry out the object of its appointment?

A. It was the next day we met the conference committee, and the committee was discharged after the conference committee meeting.

Q. What did the committee of inquiry do?

A. I do not know.

Q. What part did M'r Chandler take at the meeting of conference, and in what capacity was he there?

A. I do not remember at this time.

Q. Was he a member of the market company committee?

A. He was so, I suppose, if there. I think he was there. I will not say positively he was.

Q. Please name the persons whom you heard express satisfaction at the declaration of Shepherd?

A. Myself.

Q. My question refers not only to the meeting but after the meeting—immediately after?

A. I cannot give you the names of them, not anticipating this.

Sworn to and subscribed before me this 9th day of June, A. D. 1875.

Examiner in Chancery.

I, T. A. Lambert, examiner in chancery, do hereby certify that subsequently to the 9th day of June, at which date he last testified before me, the witness, Benjamin F. Hunt, departed this life, without previously having had the opportunity to affix his signature to the written deposition at page 86; and I further certify that such part of his testimony as was by me taken down and reduced to writing, the same being such part of the witness' aforesaid deposition as appears in manuscript, was correctly so taken down and reduced, and that such part thereof as was, by consent, stenographically taken, and appears annexed, in print, I believe to be correct.

[SEAL.] T. A. LAMBERT,
Examiner.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, T. A. Lambert, an examiner in chancery, do hereby certify that pursuant to notice, and likewise by consent, the foregoing depositions were taken down and by me reduced to writing (excepting such as, by agreement of counsel, were taken down stenographically, and are returned in print), from the statements of the several witnesses in the presence of the counsel for the complainant and for the defendants, respectively, who were then and there attending—the witnesses having been first duly sworn by me to tell the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause. I further certify that I am not of counsel, or in anywise interested in said cause.

[SEAL.] T. A. LAMBERT,
Examiner in Chancery.

149 *Testimony in chief for the defendant.*

WEDNESDAY, *March* 30, 1875.

Met at the instance of the counsel for the defendant. Present, General W. Birney, counsel for defendant. Whereupon the following testimony was taken down and by me reduced to writing, subject to the right of cross-examination by the counsel for the complainant, who was not in attendance.

BENJAMIN D. WHITNEY.

Benjamin D. Whitney, a witness produced on behalf of the defendant, being duly sworn, was examined, and he did, therefore, depose, testify, and say as follows:

Q. What relation, if any, did you bear to the Washington Market Company in May, 1872, on the 23d of that month?

A. That of secretary, sir; and I have ever since been, and am now, such secretary.

Q. Did you or not act in that capacity at the meeting on that day?

A. I did, sir.

Q. Please produce, if in your possession, a copy or the original of the proceedings of that meeting, as shown by your official record.

A. I present a copy which I am willing to authenticate by oath as an exact copy. I make it a part of my deposition, and ask that it shall be attached thereto.

(The paper writing referred to by witness was here filed, and is returned herewith, marked Exhibit A.)

BENJ. D. WHITNEY.

Sworn to and subscribed before me this 30th day of March, A. D. 1875.

T. A. LAMBERT,
Examiner.

EXHIBIT A.

WASHINGTON MARKET COMPANY,
Washington, D. C., May 23, 1872.

A special meeting of the directors of said company was held, agreeably to notice to all the board, at the office of the company, on Thursday, May 23, 1872, at 9 o'clock in the forenoon.

Present, Mess'rs Emery, Shepherd, Ordway, Tinker, Hildreth, Chandler, Kilbourn, Smoot, Coyle, and Connolly.

The Committee on By-Laws and Regulations, appointed at the meeting of January 13, 1872, reported the following, which were duly adopted as the by-laws of the company:

150 WASHINGTON MARKET COMPANY.

By-laws.

ANNUAL CHOICE OF DIRECTORS AND OTHER OFFICERS.

The annual meeting of the stockholders for the choice of directors shall be held on the first Monday in January, at such place in the city of Washington as the previous board of directors may determine.

The directors are hereby invested with and authorized to exercise all the powers now or hereafter legally conferred upon the company by its charter or otherwise.

As soon as may be, after their election, they shall choose for the ensuing year a president and a secretary of the board, who shall be secretary of the company. They may also choose a treasurer, a superintendent, and a clerk of the market; but the three latter officers need not be elected annually, but when once chosen shall continue in office until their successors are elected and qualified. The same person may, if deemed advisable, be elected superintendent and clerk.

DUTIES OF PRESIDENT.

The president shall preside at all meetings of the board and at the annual meeting of the stockholders, and shall have the general oversight of all the business of the company.

151 DUTIES OF SECRETARY.

The secretary shall keep a correct record of all the meetings of the board and of the stockholders, and shall duly attest the same and certify all copies thereof, and perform such other duties appropriate to the office as the directors may prescribe.

DUTIES OF TREASURER.

The treasurer shall give bond, as required by the charter; shall keep accurate records of all moneys received and paid out by him; shall sign and record all certificates of stock and all bonds or notes that may be issued by the company, and shall perform such other financial duties as may be prescribed by the directors.

DUTIES OF CLERK OF THE MARKET.

The clerk of the market shall give bond to the company; shall collect all rents due the company as the same may become due, and duly account for and pay the same to the treasurer at such times and in such form as may be ordered by the directors.

DUTIES OF SUPERINTENDENT.

The superintendent, under the direction of the board of directors, shall have entire supervision and control of the market buildings and

grounds and all the real and personal property owned, occupied, or controlled by the company, and shall be responsible for the cleanliness, good order, and security of the same. He shall enforce all market regulations adopted by the directors, and for this purpose is hereby invested with all the powers conferred or that may be conferred upon the company and its directors by the charter or other legislation of Congress or of the city or District authorities.

152 TRANSFER OF SHARES.

Shares in the capital stock of the company may be transferred by the surrender of the certificates thereof, with a written transfer on the back of the same or on the books of the treasurer, and new certificates shall thereupon be issued, signed by the president and treasurer.

MARKET REGULATIONS.

Regulations for the government and management of the market buildings and grounds and other property of the company shall be from time to time established by vote of the directors, and when so established they shall have the full force and effect of by-laws.

ALTERATIONS OF BY-LAWS.

These by-laws may be altered or amended at any meeting of the directors by a two-thirds vote, notice thereof having been given at a meeting held more than one week previous.

Adopted May 23, 1872.

153 The following regulations were by vote adopted and established as regulations of the company:

WASHINGTON MARKET COMPANY.

Regulations.

1. The market days and the hours for opening and closing the market will be duly prescribed, and notice thereof posted in the market buildings, and all dealers will be required to conform thereto.

2. No person will be allowed to occupy a stall or stand until he has signed the market regulations, and has received a permit describing the character of his stall or stand and the conditions of occupancy.

(1.) All renters of butchers' stalls must sell only meat as usually and ordinarily sold by butchers.

(2.) The renters of hucksters' stalls may dispose of produce and provisions of every kind, except beef, veal, mutton, lamb, pork, fish, butter, cheese, and flour.

(3.) Renters of bacon-dealers' stalls may sell only all kinds of dried and smoked meats, and salted pork and bacon.

(4.) Fish dealers shall be confined to the sale of fish and wild fowl.

(5.) Butter dealers my sell only butter, cheese, fruit in cans, and vegetables in cans.

(6.) Stalls and stands may be used for miscellaneous sales only by express authority given therefor in the permit.

No occupant will be allowed to carry on any business except that for which his stall is rented, and a failure to occupy any stand and to offer

for sale during the prescribed market hours suitable articles, as
134 authorized, will, if persisted in after warning from the company, work a forfeiture of the right to occupy the stand; and in case of a forfeiture from this or any cause, the occupant shall forfeit also all rent or bonus paid by him, and the stand shall be resold for the benefit of the company.

3. Rent shall be payable quarterly in advance, unless in cases where, by special written agreement, the payment is to be made monthly in advance. And any occupant who fails to pay his rent, or any sum due from him to the company, for ten days after the same becomes due, shall be deemed a delinquent, shall forfeit his right to his stall or stand, and shall be removed therefrom with all his property. No stall or stand, or any part thereof, shall be under-let without the prior written consent of the company. All sales and transfers made by any occupant of his right to occupy his stall or stand shall be made in writing, and delivered to the company, with a surrender of the permit then held by the occupant; and if the transfer is approved by the company, a new permit will be issued to the purchaser. At the end of the term of each occupant, he shall quit and deliver up his stand peaceably, and in as good order and condition, except ordinary wear, as the same now is or may be put into by the company.

4. Dealers must clean their stands inside and outside and the pavements thereof daily before leaving them, and must keep them at all times in a neat and creditable condition, and subject to inspection by the company. No article in an unwholesome or offensive condition shall be kept, offered, or sold in or about the market. No renter will be allowed to occupy more space than is allotted to him, nor to encroach upon or obstruct the passage-ways. No wheelbarrow or other vehicle used in bringing in produce shall remain in the passages longer than is absolutely necessary to receive or discharge its contents. All damage to any stand beyond ordinary wear will be assessed by the company against the occupant, and on failure to pay the amount assessed after ten days' notice in writing, he will be treated as if a delinquent in paying rent.

135 5. No riotous or disgraceful conduct will be allowed in the buildings, either by occupants, employees, or visitors, nor will idlers, loungers, peddlers, or disorderly persons be allowed about the premises. No smoking will be allowed about the market buildings.

6. Occupants of stalls and stands, employees of the Market Company, and all persons coming within its buildings, or upon its grounds, must conform strictly to all laws of Congress and of the District and all regulations of the company. And any person who commits any violation of such laws or regulations, or becomes a delinquent by non-payment of rent, or otherwise, shall forfeit all right to his stand, and will be removed from the buildings and grounds and arrested and prosecuted by the superintendent of the market, or the person acting as such, and his assistants, who are hereby invested with all the powers of the company for that purpose, and for the enforcement of all such laws and regulations, and whose directions must be obeyed by all.

7. Additional regulations will be prescribed from time to time as the same may be found necessary, and all persons will be required to conform thereto.

Adopted May 23, 1872.

156 Voted, that the annual rent of the stalls and stands in the buildings of the company, on Seventh, Ninth, and B streets, be as follows:

	Rent per annum.	Rent per quarter.	Rent per month.
Each butcher's stand in Seventh and Ninth street market, six feet front space	$168 00	$42 00	$14 00
Each bacon dealer, butter dealer, and bread dealer's stand in Seventh and Ninth street market, six feet front space.	108 00	27 00	9 00
Similar stands in B-street market	81 00	20 25	6 75
Each single huckster's stand in Seventh and Ninth street market	84 00	21 00	7 00
Similar stands in B street market	63 00	15 75	5 25
Each single miscellaneous stand	72 00	18 00	6 00

The rents to be payable quarterly in advance.

Voted to commence the sale of the right to occupy the stalls and stands in the new market buildings on the premises Saturday, May 25, 1872, at 10 o'clock in the forenoon, in pursuance of the notice heretofore given in accordance with the charter, and to adjourn the same from day to day until all are disposed of.

The sales shall be of the right to occupy for two years from July 1, 1872.

Sales shall be made of the choice of the stalls of each class in each building separately. After the first choice is sold the purchaser shall immediately make his selection, and the next choice shall be sold, and so on.

The purchase-money of each stall shall be paid as follows: One-fourth cash, and the balance, if desired by the purchaser, in equal instalments with eight per cent. interest, on the first days of January, 1873, July, 873, and January, 1874, with satisfactory security for the deferred payments.

The purchaser may take possession of his stall as soon as it is ready, upon obtaining his permit therefor, which will be issued after he pays or gives security for the purchase-money, pays rent for such time as he may occupy in June, one quarter's rent, commencing July 1st, and any arrearages due from him to the company for stands in the old market buildings.

157 Voted, that the president and M'r N. G. Ordway act as a committee in conducting the sales of stalls; that they be authorized to vary from or add to the foregoing rules and conditions of sale as they may deem advisable; and M'r Ordway is hereby authorized to act as auctioner in behalf of and representing the company.

A true copy.

BENJ. D. WHITNEY,
Secretary.

PRESTON S. SMITH:

Preston S. Smith, a witness produced on behalf of the defendant, being duly sworn, was examined in chief, and he did thereupon depose, testify, and say as follows (subject to the right of cross-examination by the complainant's counsel):

Q. In what capacity, if any, are you connected with the Washington Market Company, and since what date have you been so connected?

A. I am clerk of the market company; since about the 1st of January, 1873.

Q. Do you know the plaintiff in this case?

A. I do.

Q. Please state the facts relating to the occupation by plaintiff of stalls Nos. 634, 635, and 636.

A. The records of the company show that the plaintiff bid off stalls 634, 635, and 636 at public auction, May 31, 1872. The said plaintiff occupied these stalls until October 1, 1873. At that time he transferred to L. Botch 634 and half of 635, who occupied them and paid the rent therefor to June 30, 1874, at a rental of $60 per quarter, the plaintiff occupying the remaining portions of the stalls at $66 rent per quarter. On the 30th of June they left the stands and remained out of the market until the morning of the 11th of July, and have occupied the stands since that time up to the present time in the same manner. M'r Hoffman requested the market company to receive L. Botch as a tenant of the stall and a half, and to receive the rent as above stated, which was done.

Q. After Botch went into possession of the stall and a half, who paid the rent for the stall and a half occupied by him?

A. L. Botch paid the rent for the stalls occupied by him from October 1, 1873, to June 30, 1874, the expiration of his agreement with the company.

Q. Did he pay the rent himself, or through another party?

A. It was paid to a collector, and brought in to me as paid by him personally.

158 Q. To whom were the receipts for the rent paid by him made ent?

A. To L. Botch.

Q. Did James A. Hoffman ever pay any portion of the rent for the stalls occupied by Botch?

A. He did not, to my knowledge.

Q. Did you keep the books of the company with the tenants of the stalls?

A. I did.

Q. Do these books show separate accounts of James A. Hoffman and L. Botch?

A. They do.

Q. Have you in your possession a correct copy of those separate accounts? If so, please produce it.

A. I have. This is a correct copy, as exhibited by the books, of the two accounts, and I make it part of my deposition.

(Said copies were here filed, and are returned herewith marked Exhibit B.)

Q. What balance, if any, was due to the market company by James A. Hoffman for rent of stalls prior to July 1, 1874?

A. $64.80, which still remains unpaid.

Q. Did James A. Hoffman pay the rent regularly, as required by the market regulations?

A. He did not, sir.

Q. State what you know, if anything, about the payment of his bonus by complainant, Hoffman?

A. M'r Hoffman paid his note for the second instalment of bonus June 28, 1873, at the National Bank of the Republic, said note having been deposited there for collection by the Market Company.

Q. At what time did he pay the other three notes for the balance of bonus?

A. May 21, 1874; paid to F. W. Hackett, attorney, in whose hands they were for collection.

Q. Please attach to your deposition a correct statement of M'r Hoffman's account for bonus?

A. I annex it hereto, marked Exhibit C.

Q. Did M'r Hoffman ever make a tender to you of any money since the 1st of July, 1874, for the market company?

A. He did not.

Q. Please attach hereto a correct statement, taken from the books of the company, of the highest prices bid at the auction sales of 1872 for the different kinds of stalls; say for the ten highest-priced butcher stands, the five highest-priced butter stands, and the six highest-priced huckster stands—taking one stand for each bidder?

(Objected to by M'r Merrick as secondary evidence, and as irrelevant testimony.)

A. I annex it hereto, marked Exhibit D.

159 Q. What was the total at which the ten highest-priced butcher stands were struck off at that sale by defendant, and the average of each?

(Objected to as above.)

A. The total was $2,290; average, $229.

Q. Answer the same question in regard to the five highest butter stands?

A. Total, $1,355; average, $271.

Q. Answer the same question for the six highest huckster stands?

A. Total, $890; average $148.33⅓.

Q. Look on the printed slip given in the deposition of M'r Chandler, headed "signatures to market regulations," and state whether or not M'r James A. Hoffman signed that agreement in the regulation and rule book?

A. I find the name of J. A. Hoffman on the regulation and rule book, which I have here, and I believe it to be his signature, having seen him write. I find his name on the signature book twice, in two different places. The signature book is a large sized volume, and cannot be conveniently attached to the deposition, but I will produce it at the hearing, if required.

Q. When did you first hear of a claim, made by the purchasers of stalls for two years at the auction sales of 1872, that they had a right to occupy said stalls after the expiration of their two years' term?

(Objected to as hearsay and irrelevant.)

A. I first heard of it two or three months before the expiration of their lease—in the spring of 1874.

PRESTON S. SMITH.

Sworn to and subscribed before me this 30th day of March, A. D 1875.

T. A. LAMBERT,
Examiner.

EXHIBIT B.

James A. Hoffman in account with Washington Market Company, D'r.

1874.

June 30.	To rent of stalls Nos. 634, 635, and 636, from July 1, 1872, to Sept. 30, 1873, 5 quarters, at $126 per quarter.....	$630 00	
	To rent of stalls No. ⅓ of 635 and 636 from Oct. 1, 1873, to June 30, 1874, 3 quarters, at $66 per quarter.....	198 00	
			$828 0

CREDIT.

1872.				
July 1.	By cash for 3d quarter's rent of 1872		$126 00	
Nov. 25.	" " " 4th " " " "		126 00	
1873.				
May 6.	By cash for 1st quarter's rent of 1873		126 00	
Sept. 16.	" " " 2d " " " "		126 00	
1874.				
May 23.	By cash on account of rent paid May 22		259 20	
				763 20
	Due the Market Company for rent			$64 80

L. Botch to Washington Market Company, Dr.

1874.			
June 30.	To rent of stall 634 and ½ of 635 from Oct. 1, 1873, to June 30, 1874, 9 months, at $60 per quarter		$180 00

CREDIT.

1873.			
Dec. 20.	By cash and discount (paid Oct. 11) for advance rent on 4th quarter, 1873	$60 00	
1874.			
May 15.	By cash and discount on 1st quarter in advance	60 00	
April 11.	" " " " " 2d " " "	60 00	
			$180 00

EXHIBIT C.

James A. Hoffman to Washington Market Co., Dr.

1872.			
May 31.	To bonus bid at auction sale for stalls No. 634, 635, and 636, in Centre Market buildings, at $170 per stall		$510 00

CREDIT.

1873.			
June 28.	By paid note at Nat'l B'k Republic, due July 1-4	$127 50	
1874.			
May 21.	Paid 3 notes, of $127.50 each, to F. W. Hackett, attorney	382 50	
			510 00

The interest on said notes was not collected.

EXHIBIT D.

CENTRE MARKET.

Highest prices at auction sale, 1872.

Butchers' stalls.

No. 109.	Bid off by	G. W. Emerson	$260 00
116.	"	J. T. Varnell	255 00
82.	"	Poor & Joy	250 00
140.	"	W'm Turner	245 00
19.	"	B. W. Gheen	235 00
87.	"	John Weidmeyer	225 00
106.	"	B. S. Elliott	215 00
108.	"	B. A. Prather	215 00
145.	"	W'm Munder	205 00
566.	"	B. F. Hunt	185 00
		Total	$2,290 00
		Average	229 00

161 Butter stands.

No. 346.	"	J. M. Eiker	$285 00
320.	"	C. D. Fearson	280 00
175.	"	Geo. M. Oyster	275 00
492.	"	" "	245 00
172.	"	T. D. Daly	270 00
		Total	$1,355 00
		Average	271 00

Hucksters' stands.

No. 571.	"	Henry Whallon	$165 00
465.	"	L. F. Levy	155 00
263.	"	Wilkinson & Hendrickson	151 00
436.	"	W. S. Anderson	142 00
43.	"	James Cross	141 00
412.	"	W'm Heine	136 00
		Total	$890 00
		Average	148 33¼

MATTHEW G. EMERY.

Matthew G. Emery, a witness produced on behalf of the defendant, being duly sworn, was examined in chief, and he did thereupon testify and say as follows (subject to cross-examination as aforsaid):

Q. What has been and is your connection with the defendant company?

A. A stockholder in the company; a director, and also president of the company since August 10, 1871.

Q. Were you with M'r N. G. Ordway, a committee in conducting a sale of stalls May 25, 1872, under resolution of directors of May 23?

A. I was.

Q. Please look at the proceedings of said meeting, and state whether you were present at and have full recollection of the same.

A. I was, and have full recollection of it.

Q. Were you or not present at the sales which commenced May 25?

A. I was.

Q. What were the terms of sale?

A. They were the terms stated in the resolutions of the company passed 23rd of May, 1872.

Q. Did you or M'r Ordway vary or not from or change the terms of sale as stated in said resolution?

A. We did not.

Q. State whether or not the terms of sale were communicated to bidders; if so, how?

A. Those terms were read at the time of sale to the audience at each sale.

Q. State what was done by the company in reference to ad-
162 mitting purchasers into occupancy?

A. They were required to pay their bonus according to the terms of sale, to sign the regulations of the company. The company then gave them a permit to occupy the stalls for a term of two years, on paying the rent specified regularly.

Q. When were the rentals fixed and the by-laws and regulations adopted, if you recollect?

A. On the 23d of May, 1872, at the directors' meeting.

Q. State whether or not the schedule of rentals and the by laws and regulations, were accessible and open to the inspection of purchasers of stalls.

A. They were.

Q. Will you examine the copy of permit annexed to the answer of defendant? State whether it is the same that was adopted by the company and issued to the purchasers.

A. I am familiar with it, and it is a copy of the permit issued to dealers.

Q. By whom was the permit prepared?

A. It was prepared by M'r W. E. Chandler, officer and counsel.

Q. By whom were the permits signed, and were they or not issued to and received by all occupants?

A. They were signed by myself as president, and issued to all occupants, I think, without exception. If there was any exception, it was accidental. I know of no exception.

Q. Who were the legal advisers of the company relative to these sales at auction?

(Objected to.)

A. Mess'rs Caleb Cushing, W'm E. Chandler, and W'm A. Cook.

Q. State whether or not, to your knowledge or belief, any purchaser or occupant of a stall entered into the possession of the same in ignorance of the two years' term of sale, or of the rental to be paid, or of the regulations of the company?

(Objected to.)

A. Not one, to the best of my belief; these terms were stated over and over again in the hearing of the purchasers, the permit being a receipt for and specifying how the rental should be paid, and stating distinctly the term of two years.

Q. When did you first hear of the claim of the dealers, or any of them, that they had the right to occupy after the end of the two years' term?

(Objected to.)

163 A. Never until May, 1874, at the time the dealers went to Congress, or about the time we talked of advertising the resale of the stalls.

Q. Prior to that time had you or not heard from any source that the dealers could claim the right to occupy after two years.

(Objected to.)

A. I had not.

Q. How were the regulations communicated to bidders and dealers?

A. They were read to them and posted or hung up in various places where they were accessible to dealers in the market-house, where the auction took place; they were on a coarse, heavy card; they were also printed in the regulation and signature book which was signed by the purchasers and occupants.

Q. State how long you have resided in Washington; what official connection you have had with its government; what knowledge you have had of the value of the property in the city, and your means of knowledge; what knowledge you had of the markets of the city; what familiarity you have had with sales, public or private, of real or personal property; whether or not your experience has been such as to enable you to judge of the value of market-stalls within the city.

(Objected to as irrelevant.)

A. I have resided here permanently since 1842; engaged in building and in dealing in real estate. I have served as alderman and as mayor of the city. I have a general knowledge of the values of real estate in the city. I have had knowledge of the markets of the city, and, as mayor, have had general oversight of them. I think I am acquainted with the values of real and personal property and of market stalls in the city.

Q. State your opinion as to the value of the right to occupy the stalls in the Centre Market, at the prices for which the same sold at auction for a two years' term, as compared with the value of the right to occupy the same perpetually or for an indefinite period.

(Objected to as irrelevant.)

A. They would have sold at from fifteen to twenty times as much if they had been sold perpetually or for an indefinite time.

(Objected to as above.)

Q. State the facts or means upon which you base your opinion as to the value.

164 (Objected to as above.)

A. In the old shed market, formerly on the same ground, stalls did bring from $2,500 to $3,000 when one dealer transferred them to another, it being understood that the dealers had a perpetual right, although there was no law, to my knowledge, giving such right; and also from the prices the stalls sold for at the Savage Square Market, which, I am told by the auctioneer, M'r Dowling, sold as high as $3,350. Other rents in that section of the city, for stores, &c., are not one-half so high as in the location of our market. From this fact I judge, if the stalls at the Centre Market had been sold for an indefinite time, they would have brought much higher prices than the stalls sold for at the Savage Square Market.

(Objected to as above.)

At the request of M'r Merrick the witness also subsequently stated: The old shed market was located on grounds granted to defendant company by its charter, and the new market-buildings are directly in rear of the site of the old market, and take its place.

M. G. EMERY.

THOMAS DOWLING.

Thomas Dowling, a witness produced on behalf of the defendant, being of lawful age, and by me duly sworn, was thereupon examined in chief by General Birney, subject to the right of cross-examination by M'r Merrick, and did depose, testify, and say as follows:

I am an auctioneer in this city.

Q. Did you act as auctioneer of the stalls of the Northern Liberty Market-house January 4, 1875?

(Objected to as irrelevant.)

A. I did.

Q. How many stalls were offered for sale?

(Objected to.)

A. 284, I think; that number was offered, but they were not all sold.

Q. State generally the terms of sale.

(Objected to.)

A. The stalls were sold with a right to occupy for ninety-nine years, subject to the payment of a fixed rent per month.

165 Q. What was the monthly rent on butcher-stalls, butter-stands, and huckster-stands?

(Objected to.)

A. Butcher and bacon stands, $10 per month; butter-stands, $5 per month; and huckster-stands, $5 per month.

Q. Please attach to your deposition a statement of the highest bonus bid for the following: ten butcher-stands, five butter-stands, and six huckster-stands, with the number of each stand and the name of the party bidding it off.

(Objected to.)

A. I attach hereto the statement asked for, and ask that it be made part of my deposition, or so much of it as relates to the Savage Square Market.

(The statement is herewith returned, marked Exhibit E.)

THOMAS DOWLING.

EXHIBIT E.

CENTRE MARKET.

Highest prices at auction sales, July 1872.

No.	Butcher stalls.	
109	G. W. Emerson	$260
116	J. T. Varnell	255
82	Poor & Joy	250
140	W'm Turner	245
19	B. W. Gheen	235
598	Theo. Barnes	169
634	J. A. Hoffman	170
566	B. F. Hunt	185
64	H. Stebner	166
101	G. Lauer	165
		$2,100

Average per stand, $210.

	Butter stands.	
175	Geo. M Oyster	$275
346	J. M. Elker	285
320	C. D. Fearson	280
172	T. D Daly	270
495	F. Schlegel	190
		$1,300

Average per stand, $260.

	Hucksters' stands.	
571	Henry Whallen	$165
465	S. F. Levy	155
436	W. S. Anderson	142
263	Wilkinson & Hendrickson	151
412	W'm Heine	136
403	J. Hammond	135
		$884

Average per stand, $147.33⅓.

SAVAGE SQUARE MARKET.

Highest prices at auction sales in January 1875.

No.	Butcher stalls.	
203	J. R. Kelley	$3,350
427	R. Stewart	2,700
306	Theo. Barnes	2,550
314	W. C. Weaver	2,550
304	Jno. Ruppert	2,500
326	J. T. Prather	2,500
226	J. A. Hoffman	2,200
318	B. F. Hunt	2,000
313	Ed. Brooke	1,950
303	B. W. Gheen	1,950
		$24,260

Average per stand, $2,427.80.

	Butter stands	
127	M. Menke	$1,200
121	A. T. Sparrow	1,125
119	E. J. McKenna	1,100
109	F. Bray & Co	1,075
105	M. Rouser	1,050
		$5,530

Average per stand, $1,306.

	Hucksters' stands.	
114	M'r's Burk	$1,100
227	M'r's Belch	1,050
426	W'm Heine	803
430	J. Lavender & Son	700
106	C. Heshley	675
203	H. J. Bradley	650
		$4,975

Average per stand, $829.16⅔.

166 N. G. ORDWAY.

N. G. Ordway, a witness produced on behalf of the defendant, being duly sworn, was examined in chief by General Birney, counsel for the defendant, subject to the right of cross examination by the counsel for the complainant; thereupon he deposes, says, and testifies as follows:

Q. What has been your connection with the Washington Market Company?

A. I have been a director and member of the building committee, also superintendent of the company since the buildings were completed; I

was also the auctioneer of the company at the time the stalls were sold in 1872.

Q. Please state what you did as such auctioneer, and whether you had made at the time any record of your proceedings.

A. I caused the advertisement of the sale to be published and posted in accordance with the charter and the vote of the directors; the sale was advertised to take place on Saturday, May 25, 1872, at 10 o'clock in the forenoon, and to continue from day to day until all the stalls were disposed of; at the day and hour named, I appeared and proposed to commence the sale, when Matthew G Emery, president, and William E. Chandler, a director, stated to those present the vote of the directors and the terms and conditions of sale, and also exhibited and read the order or classes into which the stalls had been divided, also the appraisal of rental which had been fixed by M. G. Emery, president, representing the company, and Henry D. Cooke, governor, representing the District authorities; after a full and free conversation between the dealers and the above-named gentlemen, Mess'rs Emery and Chandler, at the request of nearly all the dealers and market-men present, M. G. Emery, president, directed me as auctioneer to adjourn the sale until Friday, May 31, at 10 o'clock a. m., at the same place; at the time and place adjourned to, after a restatement of all the conditions and terms of sale, and a rereading of the by-laws and regulations, the sale commenced, and was continued from time to time, as set forth in the record of sale, made by a clerk at the time and kept under my direction and supervision, to which record reference is made for a full narration of what transpired at the sale; I cannot spare the original record, but will place it in the hands of counsel to be produced at the hearing of this case; and I annex hereto a correct copy, carefully compared by myself with the original, and marked Exhibit G.

167 Q. What facts, if any, induced the market company to sell its stalls for the period of two years only?

(Objected to.)

A. Many of the dealers of moderate means suggested that the breaking up of the old markets had so crippled them financially, that, if the sale was made for a long or indefinite period, the wealthy dealers would out-bid them and secure all of the central and best stands; whereas, if they were sold for a short period they could all secure fair situations in the market; it was further represented that a powerful ring or combination had been formed to control the auction sale, and that it would be hazardous to the interest of the company to sell for a long or indefinite period.

Q. Suppose the sale of stalls had been made for fifty years, subject to the annual rent, instead of for two years, subject to said rent, would the amount of the bonuses been increased or diminished?

(Objected to.)

A. With fair advertisement and the natural competition at the time this sale was made, which was before the new markets were built, the bonus upon a sale for fifty years would undoubtedly reach from ten to twenty times as much as that when a sale was made for two years.

(Objected to.)

Q. Please state whether you are acquainted with the values of stalls in the Savage Square Market and of stalls in the Centre Market; if yes, please compare them.

(Objected to.)

A. I have made a comparison, based upon the value of property and rents around these two markets and find that property around Centre

Market is valued and produces rents two or three times in excess of property around Savage Square Market.

Q. How is the comparative value of stalls in the two said markets affected by the horse-car facilities of each?

(Objected to.)

A. Horse-cars run direct to Centre Market from all parts of the city, and encircle it on all four sides of Market Space, while no cars run to or pass Savage Square Market, and, I believe, none run nearer than two squares; therefore, the superior facilities for reaching Centre Market would further enhance the value of the stalls beyond what I have stated.

168 Q. Did plaintiff Hoffman pay his bonus or give his note therefor at the time of the purchase; if not, when did he give them, and under what circumstances?

A. He did not pay the bonus, or give notes at the time of the purchase. On the last days of June, or first day of July, a month after the purchase, he came to the market office and paid a quarter's rent in advance, procured consent to enter the market on July 1, upon the promise that he would pay or arrange his payments of bonus within a day or two. He did not pay his bonus, or give notes, or in any way comply with the terms of sale in that respect until some time in January, 1873. I then sent for him and told him he must pay or arrange his bonus at once. He stated that he was embarrassed by reason of building operations, and begged me to accept four notes for the entire bonus. These notes may have been dated July 1, 1872, but were not signed or delivered until Jannary, 1873. Only one of these notes were paid at maturity, and I believe all the others were paid to an attorney, in whose hands they were placed for collection.

Q. Did the market company or not ever make any contract with tenants to deduct twenty per cent. from the amounts of their quarterly payments?

A. They made no contract of that character.

Q. Did the market company ever deduct twenty per cent. from the quarterly rents due by the tenants; if yea, under what circumstances?

A. To insure prompt payment in advance after the company supposed that they were relieved from a portion of their ground rental, they deducted twenty per cent. to those who paid quarterly in advance, or who paid within the first ten days of the quarter; but there was no contract to that effect.

Q. Did J. A. Hoffman, the complainant, ever pay his quarterly rent in advance after the company began to make the twenty per cent. deduction for prompt payment?

A. The books of the company show that Hoffman never paid but one quarter's rent in advance, and that was the payment that he made before he entered the market, which was long before the company began to make the twenty per cent. reduction.

Q. When did you first hear of a claim by the purchasers of stalls at the auction sales of 1872, for two years, that they had a right to occupy the stalls after the expiration of the two years' term?

(Objected to.)

169 A. I never heard of any such claim or suggestion until near the time that the company proposed to resell the stalls, which, I think, was in May or June of 1874. I was engaged in selling the stalls at different times for several months, and was about the market as superintendent, and conversed with the dealers very often from July 1, 1871, up to the time the two years expired, and no dealer or other per-

son ever suggested such a construction of the charter to me until about the time that a committee went before a committee to Congress, about May, 1874. I will state further that in all the sales where men had abandoned their stalls, or in transfers from one dealer to another, the sales and transfers were always made for the unexpired portion of the two years, and no person ever claimed the stalls for a longer period. I suppose that nearly one-half of the stalls have been abandoned and re-sold or transferred from the original purchaser.

(Objected to as not responsive and irrelevant.)

Q. What has been the effect upon the business of the Market Company of the allowance of the injunction in this case?

(Objected to.)

A. It has prevented the payment or collection of a large portion of the rents. On the 21st day of February, 1875, there was outstanding and due the company, for use and occupation or rental since the granting of this injunction, twenty-eight thousand one hundred and ninety-eight dollars and fifty-eight cents, or more than one-half of the entire rental for a year, and very little of this amount has been paid since; in fact there is more due at the present time than there was at the time this account was made up; a large portion of this sum will be a total loss, as many of the dealers have become insolvent, while others have left the market, or are ready to leave whenever payment can be enforced against them.

N. G. ORDWAY.

Sworn to and subscribed before me this 30th day of March, A. D. 1875.

T. A. LAMBERT,
Examiner.

EXHIBIT G.

WASHINGTON, D. C., *May* 25, 1872.

I certify that in accordance with section 2 of the charter of the
170 Washington Market Company, I caused to be published in five daily newspapers printed in the city of Washington, viz: The Washington Daily Chronicle, the National Republican, the Daily Patriot, the Daily Anzeiger, and the Evening Star, notices of which the annexed is a true copy, for the space of two weeks, viz, from May 8, 1872, to May 25, 1872:

WASHINGTON MARKET COMPANY.

☞ Notice is hereby given that the right to occupy the stalls and stands in the new market buildings of the above company, on Seventh, Ninth, and B streets, in the city of Washington, will be sold at public auction, in said buildings, the sale to commence Saturday, May 25, 1872, at 10 o'clock in the forenoon, and to continue from day to day until all are disposed of.

For particulars inquire at the office of the company.

WASHINGTON MARKET COMPANY,
By M. G. EMERY, *President.*

WASHINGTON, D. C., *May* 8, 1872. my 9-2w

I also caused to be posted in and around the market building, situated between 7th and 9th streets, in what is known as "Market space,"

posters or handbills of the sale as above set forth for more than 10 days, viz, from May 10 to May 25, 1872.

N. G. ORDWAY.

At the time and place set forth in the above notice, N. G. Ordway, auctioneer and agent for the Washington Market Company, appeared and proposed to commence the sale as above set forth in said notices, when, by request of the butchers and other market men, M. G. Emery, president of the market company, and W'm E. Chandler, a director in said Washington Market Company, explained the manner in which the sale would be conducted, viz:

That the stalls would be offered for sale in classes, as follows:

The stalls in the centre of the Seventh and Ninth street wings to be set apart for butchers and dealers in fresh meats.

Sections in either end and in the centre of the B-street wing to be assigned as butter stands.

Stands in each end of B street, next to the walls, and running along on the south end of the Ninth and Seventh street wings to the centre doors, to be assigned for bacon-cutters.

171 Stands around the columns and at the entrance of the Seventh and Ninth street buildings to be assigned to bread, fruit, and miscellaneous dealers.

A number of stands on the front or B street side of the B street wing to be assigned for fish stands.

All other stands in the market were designated as hucksters' or miscellaneous stands.

The person or persons bidding the highest price for stands in each class, when knocked off to him or them, to have the first choice in the class which was then being sold; and in all subsequent sales of stands to be selected in the order in which the stands were sold.

All the stands were offered for sale upon the following terms:

The person to whom any stand should be knocked off should have the good will or right to use and occupy the stand or stands for the period of two years from July 1, 1872, and to sell or transfer such right, under the rules and regulations of the market company, and with its assent in writing, subject to the annual rental upon each class of stands, as fixed by the District government and the directors of the markets.

Each purchaser to pay one-quarter of the amount for which he bid off the stand or stands in cash, one quarter in six months, one quarter in twelve months, and one-quarter in eighteen months, from July 1, 1872. Notes bearing eight per cent. interest, with endorsers acceptable to the market company, to be given for the deferred payments. In case a purchaser preferred to pay the whole amount for which his stands or stalls were bid off, the company to allow him five per cent. discount upon the deferred payments. Each purchaser to comply with the regulations and by-laws of the market company and the terms of sale, and procure a permit authorizing such person to occupy the stands and to sign an agreement upon a book containing the regulations before being allowed to occupy the stands or enter the market for the purpose of transacting any business.

After a full explanation of the terms and conditions of sale, and the reading of the assessment for rental, made by the District authorities and the directors of the market company, signed by the governor of the District and the president of the market company, the regulations and by-laws of the company, and a full statement that ample and complete notices of the sale had been given by the officers of the company,

172 in accordance with the charter of said company, and at the request of nearly all the dealers and marketmen desiring to purchase market stands who were present, the president of the Washington Market Company directed N. G. Ordway, the auctioneer, to adjourn the sale until Friday, May 31, at 10 o'clock a. m., at the same place that the first sale had been advertised to take place, and the said auctioneer did so adjourn said sale, and gave notice to all persons present of said adjournment.

At the time and place adjourned to, viz, May 31, 1872, at the new market buildings, N. G. Ordway, auctioneer and agent for the market company, and M. G. Emery, president of said company, reread the by-laws and regulations of the company, restated the annual rental fixed upon the stalls, as had been previously stated at the time at which the original sale was advertised to take place.

Whereupon the sale commenced, and was continued from time to time as hereinafter set forth, and the stands or stalls were sold at the prices and to the persons named.

Sale of butchers' stalls, Washington Market, May 31, 1872. Each single six-foot stall @ $14 per month.

			Price per stall.	Total.
Choice.	1st	George W. Emerson, 109, 110, 111.....	$260 00	$780 00
"	34	James A. Hoffman, 634, 635, 636.....	170 00	510 00

E. M. SMITH, *Clerk.*

Adjourned to meet on Thursday next, the 1st day of April, A. D. 1875, at the same place, at 2 o'clock p. m.

T. A. LAMBERT, *Examiner.*

THURSDAY, *April* 1, 1875.

Met pursuant to adjournment. Present, General W. Birney, counsel for the defendant, and the witnesses. M'r Merrick, counsel for the complainant, having notified the examiner that it would be impossible for him to attend in consequence of his absence from town, the following depositions were taken, subject to his right to cross-examine the several witnesses:

173 PRESTON S. SMITH.

Whereupon the witness, Preston S. Smith, being recalled, was further examined in chief as follows:

Q. Has the complainant, M'r Hoffman, been in possession since the 1st of July, 1874, of any stalls in the Centre Market; if so, of what?

A. M'r Hoffman has been in possession of the same portion of the three stalls that he occupied the 30th of June, 1874; since the 11th of July, 1874, he has held one and a half stalls.

Q. By what right has he claimed to hold them?

(Objected to.)

A. By the right of his original purchase in May, 1872.

Q. Has he paid any sum as compensation for his use of the stall and a half, or tendered any?

A. He has not.

Q. What effect upon the revenues of defendant has been caused by the injunction in this case?

(Objected to.)

A. It has caused a falling off of full two-thirds of the revenue of the market; the tenants who have bought stands strongly objected to paying their rent on the ground that we had collected none of parties who had bought, therefore making the burden unequal, and it has been very difficult to enforce collections on account of the moral effect of the injunction.

(Answer objected to.)

PRESTON S. SMITH.

APRIL 1, 1875.

EDWARD B. LAFFERTY.

Edward B. Lafferty, a witness produced in behalf of the defendant, being duly sworn, was examined in chief, as follows:

Q. Please state what connection, if any, you have and have had with the Washington Market Company, and when it began?

A. In the latter part of December, 1871, I was employed by the company as carpenter; have been in the employ of the company ever since; since the buildings have been completed have had charge of all the outside business connected with the market; also have been collecting the rents from occupants of stands; I have been the regular collector; have collected up to the 10th day of April, 1874.

Q. Please state what you know of the payment of rents by James A. Hoffman, the complainant, and Leonard Botch?

174 A. I never received any rental of James A. Hoffman, as he was in the habit of paying in the office of the company. I have received of Leonard Botch rental on stalls—for one and about a half stalls—formerly occupied by Hoffman. On about the——between the first and middle of October, '73, a portion of the rental on said stalls was received from Leonard Botch by me. James A. Hoffman told me to receive rent of Leonard Botch for the part of the stalls occupied by Botch. Because of this conversation with Hoffman, I considered Botch a tenant, and collected of him three instalments of rent for three different quarters.

Q. Were you not present at the auction sales of stalls at Centre Market in 1872?

A. I was. I had the plat of the building, and located the dealers as each stall was bought and marked them on the plat, and reported numbers taken by bidders to the clerk of the auction sales.

Q. For what term of years were the sales in May and June, 1872, made?

A. For two years from July 1st, 1872. It was stated at each sale by the auctioneer, and permits given.

Q. Was the rental affixed to each class of stalls made known publicly at the sale; if so, to whom?

A. It was announced by the auctioneer at the commencement of the sale—of each sale.

E. B. LAFFERTY.

Sworn to and subscribed before me this 1st day of April, A. D. 1875.

T. A. LAMBERT, *Examiner.*

TUESDAY, *May* 11, 1875.

Met pursuant to adjournment. Present, R. T. Merrick, esq., of counsel for complainant; W'm E. Chandler, esq., of counsel for defendant; and the witness, N. P. Reid, and the complainant, James A. Hoffman; whereupon the said Reid was re-examined by M'r Chandler as follows:

N. P. REID.

Newton P. Reid re-examined:

Q. Have you ascertained how many colored men occupied stalls in the market?

A. As near as I can arrive at it, eighteen or twenty.

Q. Will you now produce the receipts given you by the company, and allow the plaintiff's counsel to annex such of them as he desires?

A. I do produce them.

(Said receipts are herewith returned, marked, respectively, Exhibits N. P. R., No. 1, and N. P. R., No. 2.)

By M'r Merrick:

175 Q. Do you mean by saying that there are eighteen or twenty colored persons occupying stalls that there are eighteen stalls occupied by colored persons, or that there were only eighteen or twenty colored persons about the market?

A. I mean, sir, that there are eighteen or twenty colored persons occupying stalls in the market at the present time as dealers.

Q. Do you mean to be understood that each colored person has a separate stall of his own in the market?

A. To the best of my knowledge, each of those persons has a separate stall in the market.

N. P. REID.

Subscribed before me this 11th day of May, A. D. 1875.

T. A. LAMBERT, *Examiner.*

EXHIBIT N. P. R., No. 1.

OFFICE WASHINGTON MARKET COMPANY,
Washington, D. C., January 9, 1875.

Received from N. P. Reid on stalls No. 370, 371, 372, eleven and $\frac{85}{100}$ dollars, for balance of January rent, 1875.

$11.85. P. S. SMITH, *Clerk.*

EXHIBIT N. P. R. No. 2.

OFFICE WASHINGTON MARKET COMPANY,
Washington, D. C., February 11, 1875.

Received from N. P. Reid on stands No. 370, 371, 372, fifteen and $\frac{75}{100}$ dollars, for rent for the month of February, 1875.

$15.75. P. S. SMITH, *Clerk.*

MONDAY, *May* 17, 1875.

Met pursuant to adjournment. Present, R. K. Elliot, esq., of counsel for complainant; W'm Birney, esq., of counsel for defendant; and J. T. Varnell. Whereupon the last named was recross-examined by M'r R. K. Elliott, as follows:

J. T. VARNELL:

Q. At whose request did you cause the paper writing presented on your redirect examination to be prepared?

A. My own.

Q. With whom did you converse in respect of your testimony on cross-examination?

A. Several persons.

Q. Name them.

A. Well, I talked with my father, for one; I talked with M'r Smith—Robert Smith; I think I talked with M'r Daily, a butter man. I think that is about all, as well as I can remember.

Q. Did you talk with any officer, agent, attorney, or stockholder of the market company? If yea, give the name of the person or persons with whom you talked.

A. I think I talked with M'r Smith, of the market, in regard to what I said that day.

Q. What did M'r Smith say about your testimony on cross-examination?

A. I don't think he said anything.

Q. Do you mean that he said nothing about your testimony, or that he said nothing at all?

A. He did not say anything about the testimony. He was talking of something else.

Q. What was he talking about?

A. Rent of some stalls, getting the rent, or something of that kind.

Q. Was he the only person connected with the market company with whom you talked?

A. Well, I have talked freely with M'r Ordway and M'r Chandler, but not about my cross-examination.

Q. Had you a copy of your testimony delivered on cross-examination on the 23d of April last in your possession at any time between that date and the date of your redirect examination, when you produced the paper writing to which I have already referred?

A. No, sir.

Q. Who prepared the paper writing referred to?

A. M'r Brooks.

Q. Who is M'r Brooks?

A. A clerk at the Commissary Department.

Q. Who dictated it?

A. I did.

176 Q. How long after your cross examination?

A. I think it was the same evening or the next morning; I disremember now.

Q. When did you first show it to M'r Chandler, counsel of the market company?

A. I think the day I brought it here, and in here.

Q. Did you read it over after M'r Brooks had written it?

A. Yes, sir.

Q. Is it correct?

A. I think it is.

Q. Were you subpœnaed to appear before the Senate Committee on Public Buildings and Grounds last summer?

A. I don't know whether I was or not.

Q. How did you happen to go there?

A. Well, I went with a lot of other butchers—dealers.

Q. You are interested, are you not, in paying off the indebtedness of the market company?

A. I suppose I am, as a stockholder.

Q. In what particular is the report of your testimony before the Senate committee incorrect?

A. Well, in regard to the right of them to sell.

Q. Any other?

A. Well, I don't think now that the rents are too high with the 20 per cent. off.

Q. Are they not as high now as they were when you testified before the Senate committee?

A. I believe they charge them the same.

Q. Did they make a deduction of 20 per cent. at that time?

A. I think they always made a deduction of 20 per cent. when we went in and paid the rent in advance.

Q. Do they make that deduction now?

A. No, sir. When I paid my last rent they told me that if they took the 20 per cent. off from the rest they would take it off from me; but they did not do so. I did not pay in advance. I think that Mr Smith told me that if I paid in advance they would take the 20 per cent. off.

Q. Have they ever reduced the rent since the sale of the stalls in 1872, in any manner whatsoever?

A. Only in the 20 per cent. for advance payment. I have paid before now when my rent was past due and got the 20 per cent off, and I think others have too. That was a long time ago. I am not certain that it was done.

Q. Was the reduction of 20 per cent. made for prompt payment in advance prior to the 18th of March, 1873, the same as since that date?

A. I don't recollect the date.

177 Q. Was it made during the first year of your occupancy of the stalls under the new market company?

A. I think it was about that time.

Q. Has it been made in the same way since?

A. I don't remember, sir.

Q. Has there been at any time since the 1st of July, 1872, to your knowledge, any reduction in the rents as originally fixed, excepting the discount of 20 per cent. for prompt payment in advance?

A. I don't know as there have.

Q. What light have you now in respect to the right of the company to resell the stalls that you did not have when you were before the Senate committee?

A. Well, I always thought they had a right to sell them—always thought so.

Q. Did you think so when you were before the committee?

A. Yes, sir.

Q. Is the rent 20 per cent. higher than it ought to be?

A. Well, I think the rent is too high upon the generality of butcher stalls, and not enough upon others. I think the butter stalls and some others should be as much as the butcher stalls.

Q. You are a butcher, are you not?

A. Yes, sir.

Q. What is the par value of the stock held by you?

A. Fifty dollars a share. I own one hundred and ten, and hold a hundred as collateral for money loaned.

J. T. VARNELL.

Subscribed before me this 16th day of May, A. D. 1875.

T. A. LAMBERT,
Examiner.

Adjourned to meet at the same place at the hour of 12 o'clock m., on Wednesday, the 18th day of May, A. D. 1875.

T. A. LAMBERT,
Examiner.

178 FRIDAY, *April* 16, 1875.

Met pursuant to adjournment. Present, M'r R. T. Merrick, counsel for the complainants; W'm E. Chandler, esq., of counsel for the defendants; and the witnesses, George M. Oyster, Benj. S. Elliott, Preston S. Smith, and N. G. Ordway; whereupon the cross-examination of N. G. Ordway was proceeded with by M'r Merrick, as follows:

N. G. ORDWAY.

Q. Have you a copy of the advertisement of the sale of stalls which, in your examination-in chief, you say you caused to be made?

A. You will find a copy with my examination-in-chief, marked Exhibit G, signed by Matthew G. Emery, president.

Q. Is that the only advertisement of sale that was made?

A. There were similar notices printed in handbills and posted around the market, as shown in the same exhibit. There were also other notices of a more extended character printed in large handbills and posted on nearly all the roads leading into the city, and on all the principal places for posting in the city.

Q. What is the exhibit to which you have referred, and what were the contents copied from?

A. It is a copy of the record of the sale, so far as it extends—extending to cover this case of M'r Hoffman.

Q. Who made that record?

A. It was made under my direction by my clerk, who kept the minutes of the sale.

Q. What was his name?

A. There were two or three different clerks during the sale; this first portion was made by myself and a clerk by the name of E. M. Smith; he is now residing in Boston.

Q. What part of it did you make and what part of it did he make?

A. While the sale was going on he kept the record of the sale; the record was made up after an examination by myself as auctioneer.

Q. Do you mean that you examined the record, or that you wrote the record?

A. I think the record was written by the clerk.

Q. Did he write it out from minutes kept of the proceeding of the sale, or did the minutes he kept themselves constitute that record?

A. I am unable to say whether the record in the book were the original minutes as taken down in the building while the sale was going on, or whether it was copied in the book each day after the sale had been concluded.

Q. Who signed those records?

A. The clerk signed them after the sale had commenced. I signed the record, as appears by the exhibit, as auctioneer, and agent in regard to posting the notices, &c.

Q. Look at the exhibit and state whether you mean to be understood as having signed only that part of it wherein your name appears.

A. I don't see that I did by this record.

Q. All this exhibit purports to be what you call a record, does it not?

A. It does.

Q. Where is the original from which this exhibit purports to be copied?

A. I think it is at the market office.

(M'r Chandler offers to produce the original.)

Q. None of your posters contained any more specific statement of the terms of sale than those which are set forth in Exhibit G as having been advertised in the papers, did they?

A. The large posters to which I have referred as having been posted so generally contain much more matter.

179 Q. At the sale, according to this paper you call a record, you read the by-laws of the company; did you read them all?

A. I read the regulations or by-laws, and read all that had been adopted.

Q. Have you not both regulations and by-laws?

A. I think they are termed generally "regulations," but they may have been adopted both as regulations and by-laws by the company.

Q. Did you state by what authority your company assumed to make regulations and by-laws?

A. I don't remember whether I stated that or not; I think the president did.

Q. What did the president state in that particular?

A. I don't now recollect what he did state; I remember that sections of the charter were read during the sale, and many questions answered by myself and the other officers of the company.

Q. Were these sections read by M'r Emery?

A. I don't recollect whether they were read by M'r Emery, M'r Chandler, or myself. All participated in statements at the opening of the sale.

Q. Are you certain that M'r Chandler was there?

A. I think he was there on the first day, and on several other days of the sale.

Q. Was M'r Emery there?

A. I think he was.

Q. You have stated in your examination-in-chief that the market company was induced to sell its stalls for the period of two years only at the suggestion or request of many of the dealers of moderate means; state who those dealers are that so suggested or requested.

A. I didn't so state. That was not my answer to the question on that subject. The answer refers to a long or indefinite period in distinction from a shorter period.

Q. Who were the dealers of moderate means, then, that suggested or requested that the sale should not be made for a long or indefinite period?

A. It is now nearly three years since the statements I have referred to were made, and I do not recall the names at this moment, but I am positive that there were quite a number who made the request not to have the stalls sold for an indefinite or long period.

Q. Can't you recall a single one?

A. I might upon reflection. I do not at this moment.

180 Q. How long have you been connected with this market company enterprise?

A. Since the organization of the second or present company, about November, 1870.

Q. Did you make the arrangement for the occupation by dealers of the stalls in the new sheds built in December, 1870, after the fire?

A. As a member of the building committee I had charge of the erection of the sheds. The assignment of stalls, I believe, was made by a committee of marketmen themselves, of which I think M'r Oyster was a member, and I think M'r Hunt also.

Q. Did you come in contact with the dealers to whom these stalls were assigned?

A. I saw them nearly every day.

Q. Did you continue to see these men from that time down to the sale in 1872?

A. I visited the market once or twice a week during that time when I was in the city.

Q. And since that time—that is, the sale in June or July, 1872—have you continued to visit the market; and, if so, how often?

A. I have been at the market quite often.

Q. For what purpose did you visit the market after December, 1870?

A. I continued a member of the building committee during the construction of the new buildings, and spent a large portion of my time there until they were completed; also had general charge, under the board of directors, of the market while carried on in the sheds. After the new buildings were completed, in the summer of 1872, I was superintendent of the market.

Q. Whilst the building was being constructed did you talk with the dealers about the mode of construction and progress of the work, &c.?

A. I did.

Q. When you visited the market as superintendent did you meet the dealers and talk with them about the way things were being conducted?

A. I did; quite often.

Q. Then, in the discharge of your duties as superintendent in connection with that company, do you mean to say that you became acquainted with the dealers in that market?

A. I know a great many of the dealers by sight, and many of them by name.

Q. And yet, as I understand you, you can't identify a single dealer who requested that these stalls should not be sold for a long time or an indefinite time?

A. My answer was that I did not at that moment recall the names. I have since remembered that two or three of the Holmes brothers suggested that if these stalls were sold for a long period M'r
181 Oyster and one or two other wealthy dealers would outbid them and keep them out of the most desirable stalls, as M'r Oyster and the committee had done in assigning the stalls in the new sheds.

Q. How many Holmes brothers are there?

A. I know two that are brothers, and I know another dealer who I supposed to be a brother. I have seen him with them.

Q. What do they deal in?

A. I think one of them is a huckster, and I don't know but they all are.

Q. Did they purchase and do they occupy stalls in your market?

A. Two of the Holmes brothers purchased stalls at auction, and I think they have sold, transferred, or given them up. I don't think there's any of them that occupy stalls there now. I believe they all had stalls in the old market before it was burned.

Q. When did they cease to occupy stalls in your market?

A. I cannot tell definitely without examining the books.

(M'r Merrick asks the witness please to examine the books and give the information.)

Q. When and where were these suggestions of the Holmes brothers made to you?

A. I cannot give the exact date, but it was a short time previous to the sale.

Q. Do you now recall any other dealer that made such a suggestion?

A. I talked with a great many other dealers about the term of years at which the sale should be made, and, with the exception of the prominent or wealthy dealers, I think the term of two years was generally acquiesced in. I do not at this moment recall other names, but think I might do so after reflection.

(The answer, except the last sentence, objected to by M'r Merrick as not responsive.

M'r Chandler expressed his willingness to have the excepted part of the answer stricken out.)

Q. Did the Holmes brothers ever occupy any stall in this new market under the sale made in 1872?

A. I can answer that, as I have before stated, by consulting the record; couldn't without. I knew they purchased at the auction sale.

Q. Don't you know they never paid for the stall, and don't you know they never occupied it?

A. I don't know that they did not. I can tell by consulting the record.

Q. Did they comply with the terms of sale by making the cash payments?

A. I can answer that by examining the records.

182 Q. You have further stated in your examination-in-chief that it was represented that a powerful ring had been formed to control the auction sale; who made that representation?

A. These representations were general talk amongst our directors, and the belief was so general I was induced to take out a license as auctioneer to conduct the sale myself, to try to prevent the interests of the company from being sacrificed by the combination.

(Answer objected to as not responsive, and question repeated.)

A. I remember hearing Col. Smoot speak of it; M'r Hildreth; I remember the clerk of the company, M'r John L. Gilmore, and, I think, quite a number of market men.

Q. Who is M'r Smoot, and who is M'r Hildreth?

A. They were both directors of the company at that time.

Q. Which of the market men did you hear represent that this ring had been formed?

A. I do not recall their names at this moment; I think that I could, by refreshing my memory, recall some of their names; three years is a long time to carry the names of persons in memory.

Q. What other precaution, besides being appointed auctioneer, did you take to meet this supposed ring?

A. None, except to give a fair time to the sale.

Q. You had a reserve bid, or a minimum price, or a company bid, had you not?

A. We had no company bid; there were certain stalls assigned to the butter trade, and after they were all or nearly all sold, other men came forward and wanted a few more stalls added to the list, and offered a bid equal to that which the others had brought; the purchasers in that entire class assenting to the arrangement, a few more were added; there was no reserve or minimum bid.

Q. If that ring that you speak of had have prevailed—been strong enough—and you had only received a bid of two dollars and a half per stall, would you have sold it?

(Objected to by M'r Chandler.)

A. I should have gone on or adjourned, as the directors should have ordered me.

Q. Had you no directions from the board to cease selling under any stated contingincies?

A. I was directed to continue each sale as long as persons were prepared to buy or to purchase; I knocked off butcher stalls as low as twenty dollars apiece, and I don't know but lower.

183 Q. Did you assist in getting the charter of this company through Congress, either directly or indirectly, as interested in the success of the undertaking, or as friend of the parties who were pressing it?

A. I did not, either directly or indirectly, either for my own advantage or for the advantage of any friend; was not in favor of the charter nor of the corporators.

Q. You did, however, both as interested for the enterprise, friend of the corporators, and friend of the company, at the last session of Congress, use active efforts to obtain the passage of a supplemental act to construe section two of the charter in such way that the holders of stalls should not be entitled to retain the same beyond two years from the date of their purchase, did you not?

(Objected to by M'r Chandler.)

A. I did not advocate a bill such as your question implies; I did, as a large stockholder and creditor of the company, go before the Committee of the District of Columbia and express the wish to have a bill passed defining the second section of the charter, which bill simply proposed to reopen the sale, and to sell for an unlimited period; also to make more certain and easy the collection of rents.

Q. Did not the bill and your proposition contemplate another sale without regard to the wishes of those who had bought at the sale of 1872?

(Objected to as above.)

A. It contemplated a reopening or selling the stalls for an indefinite period, treating—so I understand the bill—treating the amount paid on the first sale as an advance payment or credit. I think if the dealers had understood the bill, many of them would have been favorable to it.

(The last sentence objected to by M'r Merrick as not responsive to the question.)

Redirect by M'r Chandler:

Q. When was the original record of which Exhibit G is a copy made?

A. It was, made at the time, or as soon after as it could be written up

Q. Was it or not made up by your direction and under your supervision?

A. It was, from the minutes.

Q. Did you or not see it at the time it was made?

A. I did, and examined it page by page.

Q. Did you or not then know that the facts therein state dwere correctly stated?

184 (Objected to by M'r Merrick.)

A. According to my best knowledge and belief at the time they were correctly stated.

Q. What became of the original memoranda taken while the sale was going on, from which the record was made up?

A. I don't know whether they are at the market office or not, and I'm not certain that the entries of the sale were not made as original entries in the book of which this paper is a copy.

Q. Will you ascertain the facts on this subject?

A. I will.

Q. Independent of any record, what is your recollection and knowledge as to the time for which the rights to occupy stalls were sold, and as to the notice of that time given to the bidders? State fully.

A. I remember distinctly the time for which the stalls were sold was for two years from July 1, 1872. I remember of stating the time fully at each auction sale, as well as all the terms and conditions embraced in the market regulations, the amount of rental, and know, of my own personal knowledge, that these conditions were well understood by all bidders and those present.

(Answer objected to, especially the last part, as being matter that could not be within his (witness') personal knowledge, by M'r Merrick.)

I desire to modify the answer as follows: That I believe that all these declarations and statements were well understood by all parties.

(Objected to, as being belief and not fact, by M'r Merrick.)

The deposition being read over to the witness, he stated further as follows:

I desire to add to that portion of my testimony, where I say I was induced to act as auctioneer at the first sale of stalls on account of a combination of dealers to control the sale, that I have been in the habit of acting as an auctioneer at large sales, occasionally, for the past twenty years.

N. G. ORDWAY.

Adjourned to meet on Monday, the 19th instant, at the same place and hour.

T. A. LAMBERT,
Examiner.

MONDAY, *April* 19, 1875.

Met pursuant to adjournment. Present, M'r R. T. Merrick, counsel for the complainant; Messr's Chandler and Birney, counsel for
185 defendant, and the witness, Preston S. Smith; whereupon the latter was cross-examined by M'r Merrick, as follows:

PRESTON S. SMITH:

Q. How long have you been clerk in the Market Company?

A. Since January 5, 1873.

Q. Who preceded you?

A. John L. Gilmore.

Q. Where is he?

A. I think he is in Boston, Mass.

Q. Did the Holmes Brothers, spoken of by M'r Ordway, ever occupy stands in the market house after the sale of the stalls in 1872?

A. I cannot answer that fully, as I have not the stall record-book with me; they have not been occupants since I have been clerk of the market.

Q. Where are those books?

A. M'r Ordway has the book. He is to bring it here this evening.

Q. In whose custody has it been?

A. Some of the time in M'r Ordway's custody and some of the time in my own.

Q. Were you not its proper custodian?

A. I presume so.

Q. When did you last see it?

A. Yesterday morning. I went to the office and left it in charge of the occupant of the office for him if he wished it—for M'r Ordway—as I could not be there at the time appointed to meet at the office.

Q. Yesterday was Sunday, was it not?

A. Yesterday was Sunday.

Q. Have you any of your books with you?

A. I have.

Q. Why did you not bring the one in question?

A. Because M'r Ordway said he had taken it and he would bring it.

Q. When did he tell you so?

A. This afternoon.

Q. Has any rent been tendered to you by the holders of stalls in the market since the 1st of June last?

(Objected to, unless the inquiry is limited to the plaintiff, by M'r Chandler.)

A. There has not.

Q. Has any stall-holder offered to pay any rent within the time mentioned in the last question?

A. I think there have—several.

Q. Have you stated to any stall-holder that you would not receive rent?

(Last two questions objected to as above.)

A. I think I may have stated to some who were occupying stalls without the consent of the company that I could not take money of them as rent, but would take a sum equal to the rent, as they owed the company for use and occupation.

186 Q. What do you mean by occupying stalls without the consent of the company?

A. I mean that the time for which they purchased the right to use the stalls had expired, and they had left the stalls in possession of the company, after which they returned without the consent of the company and occupied the stalls of the company, and when they asked to pay rent it was then I told them that I could not take it as rent, but only for use and occupation.

Q. Did you not also refuse to take rent from those who never had left their stalls in possession of the company?

(Objected to as above.)

A. I did, if they had not repurchased their stalls at the sale advertised to take place in June last; but these refusals were very few.

Q. Did you not give it out publicly to all the market people who inquired of you upon the subject that you would accept no rent from holders of stalls who had purchased at the original sale in 1872, and had not repurchased at the sale advertised to take place in June, 1874, for any period subsequent to the time of such advertisement in 1874?

(Objected to by M'r Chandler.)

A. A few persons called to inquire upon this matter, and I informed them that I could not receive rent from them as rent heretofore. They did owe for use and occupation, and that I should not give them a receipt, only for a sum equal to the rent, without affecting their rights or waiving any of the company's in regard thereto.

Q. But you told them that you would not receive rent from them, did you not?

(Objected to as above.)

A. I told them they owed us for use and occupation, and I could only receive money for that purpose.

(Question repeated.)

A. I answer the same.

(Question repeated.)

A. I don't see how I can improve the answer when I say that I would not receive it as rent but would for use and occupation, which they owed, or a sum equal the rent, and showed them a printed receipt for the use and occupation which they owed—a printed blank.

Q. Have you got a copy of that printed receipt?

A. I have, and attach it.

(Said printed form is herewith returned, marked Exhibit H.)

187 Q. When was the form of that receipt prepared?

A. I can't state exactly, but think a short time after the dealers returned to the market.

Q. They returned immediately after the decision of a motion for an injunction in this case, did they not, those that had left?

A. They did.

Q. And in consequence of the decision, with the understanding that they were to occupy as before?

(Objected to by General Birney, because witness cannot testify to the understanding of the parties who took possession.)

A. They returned immediately after the decision, but not by any consent of the market company that I know of.

Q. Was the form of receipt which you have attached to your testimony and marked "Exhibit H" the only form of receipt prepared since the decision referred to?

A. I think there were two forms prepared, but only one was printed from to my knowledge.

Q. Were you instructed not to receive rent from stall-holders whose two years, as you claim, had expired, except upon their consenting to take one of those receipts?

A. I was instructed not to receive money as rent from this class of persons, but to receive for use and occupation a sum equal to the rent, as in that receipt.

Q. Who gave you those instructions?

A. M'r Chandler gave me some, M'r Ordway others, M'r Emery—the board of directors.

Q. Has the book inquired of in the earlier part of this examination been brought in by M'r Ordway?

A. M'r Ordway has been here, but has not given me any book; I presume he has brought it, but do not know; he will be in soon; when he comes I will ascertain.

Q. If you don't know that he has brought it into this roome, please ascertain when you can, and produce it.

(M'r Chandler here interposes, and says that M'r Ordway has brought the book in question into the room; has retired for a few minutes, during which period he has left the book in his, M'r Chandler's, hands, with the intimation that he desires to produce it himself in preference to its production by M'r Smith; wherefore M'r Chandler declines to offer the book until M'r Ordway's return.)

188 Q. Do you know anything of the purchase of any stands in the market by Holmes, or either of the Holmes brothers, from anything you have ever seen on any of the books of the company?

(Objected to as immaterial by M'r Chandler.)

A. I don't know whether they have or have not, having never examined the books for that purpose.

Q. Have you never seen anything in the books of the company in regard to them or either of them?

(Objected to as above.)

A. I have no distinct recollection of seeing anything on the books in regard to them.

(The cross-examination was here suspended until M'r Smith can obtain from M'r Ordway the book inquired about.)

Redirect by General Birney:

Q. In your use of the word "rent," do you mean it to apply to what was due from time to time under the contract of 1872, or to the amounts falling due for the time current since last July?

A. For the time under the contract prior to July, 1874, and to those who repurchased the stalls in June, 1874; or, in other words, to those who were under contract.

Q. What kind of a contract; auction sale?

A. Auction sale.

Q. In what sense did you use the terms "use and occupation"?

A. In the sense of occupants using without contract.

Q. Did you ever refuse to receive money from stall holders for the occupancy of stalls, except in such form as you thought would admit the claim made by the purchasers in 1872 to hold permanently?

A. I have not.

Q. In the conversations of which you speak, in which you said you had refused to receive moneys, did you or not always make this meaning as plain as you could?

(Objected to by M'r Merrick.)

A. I did, and think they went away fully satisfied with the explanations.

(Last part of the answer objected to as being a matter of opinion, and on a subject upon which he could not form one.)

Q. Did you or not uniformly show in such cases a printed blank form of receipt produced by you?

A. I did show them a receipt, and gave them freely to those who wanted; I mean the blank form of receipt.

Q. Did M'r Hoffman, the complainant, ever offer to pay you, for the company, either with or without receipt, any money for his occupancy of the stalls since July 1, 1874?

189 (Objected to as matter inquired of in chief.)

A. He did not for occupancy.

Q. What offer did he make, if any? State fully what he said.

(Objected to as above.)

A. After having made a demand on him for money for use and occupation of his stalls, he first asked if I did not know that I had no right to serve those papers; he afterwards asked if I would give a receipt for rent if he would pay it; I stated I would give him a receipt for use and occupation for a sum equal to the rent.

Q. Did you refer in conversation to the printed receipt?

A. I did, and think he knew what it was.

Q. Did you or not demand payment of arrears due and amounts owing since July 1, 1874, from the stall-holders; if so, in what form?

A. I made demands for all sums due since and before July, 1874, by giving them a printed blank filled with the amounts due up to time of service from them, and addressed to them.

Q. Please produce one of the blanks, if you have it.

(Printed forms here produced, and returned marked Exhibits I and J, respectively.)

Q. Has not the Washington Market Company been ready, at any and all times since 1st of July, 1874, to receive payment of arrears from stall-holders accrued prior to that time, and to receive from each a sum equal to the rent due since that time?

A. They have.

Recross-examination by M'r Merrick:

Q. Will you now produce that book of which I inquired, M'r Ordway being present?

A. I have the book.

Q. State what it is.

(Objected to, unless the witness knows from personal knowledge, by M'r Chandler.)

A. I have no personal knowledge of what it is; I did not see it made up.

Q. Do you mean to say that you don't know what that book is?

A. I mean to say that I suppose it to be a record-book. There are some records in it of my own making. These I know to be a record of sales of stalls in the Centre Market that were resold after I was clerk of the market.

Q. Then you did see part of that book made up, did you?

A. I made a record of a few sales in the spring of 1873 in this book.

190 Q. How came you to put the record of those sales in that particular book?

A. By direction of the superintendent of the market, who had the custody of the book.

Q. You knew what the book was used for at that time, didn't you?

A. I knew what I used it for, and supposed it to be a record-book, but have no knowledge of the records that have been made prior to mine—personal knowledge, I mean.

Q. When asked, in the earlier part of your cross-examination, whether the Holmes brothers ever occupied stands in the market-house after the sale of stalls in 1872, did you reply that you could not answer that fully, as you had not the stall record book with you; is the book you now have the one to which you referred?

(Objected to by M'r Chandler as immaterial.)

A. It is.

Q. Will you now answer the question fully as to whether the Holmes brothers did occupy stalls in that market?

A. I was not in Washington until about the middle of December, 1873, and have no personal knowledge of the Holmes brothers occupying or not any stall in the Centre Market.

Q. What did you mean, then, by saying in one of your previous answers, that you could not say whether they occupied stalls in the market or not, because you had not then with you the book which you now have?

(Objected to by M'r Chandler.)

A. I meant that I had no personal knowledge of their occupying any stands, not having examined the book to know whether any record of their occupancy was contained therein. I could not answer the question until the book was produced, and I have not had time to examine the book.

Q. Does that book show whether they occupied or not? And if it does, please open the book and show us the entry.

(Objected to by M'r Chandler as immaterial, and that it does not appear that the witness made the entries or knows them to be correct.)

A. I can't state whether it shows that fact or not without examination.

Q. Why don't you open the book and look at it, and see what it shows?

A. Simply for want of time; haven't got time to examine it.

Q. I understand that you now state that you cannot answer the question for want of time to examine the book, and previously that you could not answer it for want of the book?

191 (M'r Chandler desires the examiner, at this point, to suspend the examination to give the witness time to examine the book; which is done.)

A. The book does not show occupancy of the stalls.

Q. Have you any book that shows who occupied stalls?

A. I have a stand-ledger which shows who occupied stalls.

Q. Look at your stand-ledger and say whether that book shows that either of the Holmes brothers occupied stalls in the market.

A. The stand-ledger shows that George Holmes occupied or bid off stands 386 and 387.

Q. Does it show that he ever occupied that stall?

(All inquiries about the Holmes brothers objected to as immaterial by M'r Chandler.)

A. His name appears on the book; that's all that I can say about it. I can't say that he occupied it.

Q. Is not the entry to which you have referred in pencil; and are not all the other names on that page of the ledger, and throughout the ledger, in ink?

A. That name is in pencil. There are other names on that page in pencil. There are other names throughout the book in pencil; quite a number.

Q. You say that there are other names on that page in pencil. What stand is entered in connection with any other name that is in pencil on that page?

A. I correct the former answer in regard to the name in pencil. I find that I am mistaken, and no other stand is on that page in pencil; but other names to the same stand with Holmes is in pencil.

Q. Doesn't that book show that no rent was ever paid by Holmes on that stand?

A. It does not show any rent paid by Holmes.

Q. Was any bonus ever paid by Holmes?

A. Not that I know of; and I don't know but that he did.

Q. You have books that show who did and who didn't pay bonus, haven't you?

A. They have books since I've been clerk that show what has been paid.

P. S. SMITH.

Sworn to and subscribed before me this 19th day of April, A. D. 1875.

T. A. LAMBERT,
Examiner.

192 EXHIBIT H.

$.] OFFICE WASHINGTON MARKET COMPANY,
Washington, D. C., , 187 .

Received of , dollars, a sum equal to the amount of rent of stall No. , from to , to be accounted for according to the legal rights and obligations of the payer and the market company, as they may be finally determined by the court. In the meantime none of said rights or obligations to be waived or affected by said payment or its reception.

Clerk.

EXHIBIT I.

OFFICE WASHINGTON MARKET COMPANY,
Washington, D. C., , 187 .

On behalf of the Washington Market Company, and by its direction, I demand of you payment of $, for use and occupation since June 30, 1874, up to December 31, 1874, of stand numbered , in the Centre Market, Washington City.

P. S. SMITH, *Clerk.*

To ,
Stands No. .

EXHIBIT J.

OFFICE OF WASHINGTON MARKET COMPANY,
Washington, D. C., , 1875.

On behalf of the Washington Market Company, and by its direction, I hereby notify you that the sum of $ has been due from you to the company for more than ten days, and is still unpaid; that, under section 3 of the market regulations, you are a delinquent, and that the said company insists upon the forfeiture of the stand, No. , occupied by you in the market of said company, and that you shall remove therefrom with all your property, and allow said company to repossess said stalls.

Clerk.

To .

193 At the close of M'r Smith's testimony, General Birney desired it to be noted that he here offered N. G. Ordway, esq., as a witness competent to testify concerning the books referred to in the cross-examination of the said Smith, said books having been made up under the supervision of the said Ordway.

T. A. LAMBERT,
Examiner.

Adjourned to meet at the same place at 10.30 a. m., on Tuesday, the 20th day of April, A. D. 1875.

T. A. LAMBERT,
Examiner.

TUESDAY, *April* 20, 1875.

Met pursuant to adjournment. Present, R. T. Merrick, esq., for the

complainant, General Birney, for the defendant, and the witness, Matthew G. Emery, esq., who was thereupon cross-examined by M'r Merrick, as follows:

MATTHEW G. EMERY.

Q. You have stated in your examination-in-chief that purchasers of stalls were required to pay their bonus and sign the regulations of the company before being admitted into occupancy. Were such payment and signature invariably required from the purchaser as conditions precedent to their occupancy.

(Objected to as requiring a legal opinion from the witness.)

A. It was, to the best of my knowledge. (Further explained below.)

Q. Would the company admit no purchaser to occupy the stall or stand bid off by him without his having a permit of the nature you have testified to in your examination-in-chief?

A. It was understood that they were not to. I don't know that they did in any case.

Q. What was the resolution with regard to the terms of sale to which you have referred in your examination in-chief?

A. I can only say it was a resolution passed by the directors. I do not know the wording of it. I presume there is a record of it, which I suppose can be produced.

Witness desires to explain his answer to the first question on cross-examination, and thereupon does as follows:

The permit was given to the parties who purchase stalls as an
194 evidence that they could occupy them for the term of two years. There was no special agreement that they could have such permits, but the permit was an evidence that they had made a purchase, and had complied with the conditions of sale, and permitted them to occupy the stalls for the term purchased—two years—on condition that they paid their rent, but no bargain was made between the company and the parties as to the permit. I refer to Exhibit F, as showing the kind of permit I have mentioned.

Q. Were these permits issued before or after the auction sale?

A. After the auction.

Q. Could a party occupy the stall purchased by him without this permit?

A. The sales took place. At each sale they were required to go to the office, settle for their bonus, sign the regulations, and take their permit. That is all I know about it.

Q. Were you one of the original stockholders in this company?

A. Yes, sir; the present company.

Q. Were you named in the bill as one of the original incorporators?

A. I don't know. The papers will show.

Q. Did you take any part in getting the original charter passed by Congress?

A. Never spoke to a member of Congress on the subject. I took quite an interest to get the company to build a market-house to get rid of the old sheds that were an eye-sore to our city.

(The three last questions objected to as immaterial.)

Q. Did you take any part in getting up the bill which subsequently became the charter?

A. I might have seen the bill before it became a law, but never had a hand in getting it up.

Q. Did it pass as originally got up and presented?

(Objected to as a fact shown by the reported records of Congress.)

A. I know nothing about that; I did not take interest enough in the matter to go see; I do not remember anything about the matter.

Q. Who were the parties actively engaged in preparing that bill and forwarding it before Congress?

A. I think J. W. Angus and Henry S. Davis were the most active in getting it up; that is my impression.

Q. Who prepared the original draft of your bill?

(Objected to as above.)

A. I have not the slightest knowledge, and do not know anything about it.

195 Q. When did you become a stockholder in this company?

A. I deposited money, at the time we had a meeting at the Patent Office, with others; I can't remember the exact date; the books were opened, I believe, at the Patent Office.

Q. Were the books not opened twice at the Patent Office under this charter?

A. I cannot say; I do not remember taking any part in it the first time.

Q. What became of the first organization in which you were named in the charter as one of the corporators?

A. Don't know; I did not take any action with them; I did not intend to take any stock with that party that were there—the first organization; they had meetings and notified me to attend, but I did not attend them.

Q. Was there a second organization formed, and, if so, when—under what authority?

A. The second organization was formed under the fifteenth section of the charter; as to *to* the date, I can't say; it was some months after the approval of the bill, which was May 20, 1870.

Q. When the new company was organized under the fifteenth section did the persons organizing the same associate themselves together in writing by articles subscribed by them?

(Objected to as irrelevant.)

A. The first act was to go the Patent Office and subscribe for so many shares and pay the money required by the terms of the charter; I presume there was an organization formed in accordance with the charter, calling for the meeting at the Patent Office and for the subscription to the stock.

Q. Did the original corporators in the charter ever organize?

A. I suppose they did; as to when they did, I do not remember; at that time I was mayor of the city, and very busy; my brother was acting with me, having interest in the stock, and he probably attended to it for me; I do not remember anything about it.

Q. Was there any discussion in the meeting that adopted the resolution to which you have referred as to the terms of sale, about these terms?

A. I don't remember that the resolutions they passed were discussed; they might have been.

Redirect:

Q. Were not notes to be taken for the whole, or the greater part of the bonuses bid at the auction sales of 1872?

(Objected to.)

196 A. I think so; three-quarters of the sum, payable, I think, in six, twelve, and eighteen months.

Q. Did the auctioneer stop to take these notes for the bonus after

making each sale and before proceeding to another, or were the notes taken afterward at the office?

A. The sales were adjourned from time to time, and the parties went to the office and made their settlements according to the terms of sale.

Q. Were not the permits given whenever the purchasers complied with the terms of purchase?

A. They were in all cases, so far as I know.

M. G. EMERY.

Adjourned to meet at the same place and hour on Thursday, the 22d day of April, A. D. 1875.

T. A. LAMBERT,
Examiner.

THURSDAY, *April* 22.

Met pursuant to adjournment. Present, Mess'rs Merrick and Elliott, counsel for complainant; W'm Birney, esq., of counsel for the defendant; the witnesses, N. G. Ordway and Moses Bradshaw; whereupon it was determined to further adjourn the taking of testimony until this afternoon at two o'clock.

THURSDAY, *April* 22—2 P. M.

Met pursuant to adjournment.

Present, R. K. Elliott, esq., of counsel for complainant; Gen. Birney and W'm E. Chandler, esq., counsel for the defendant; and the witness, Edward B. Lafferty, who was called by the counsel for the defendant for the purpose of being further examined in chief, who was, thereupon, further examined in chief, as follows:

EDWARD B. LAFFERTY.

Q. Please state whether or not your employment in the service of the defendant has kept you constantly in and about the market and in communication with stall-holders.

(Objected to as leading and irrelevant.)

A. I have. I am acquainted with every dealer in the market—I was up to a few months ago.

Q. At what time did you first hear from any stall-holder, or other person, of a claim by stall-holders to hold permanently under the two years' purchase of 1872?

(Objected to because it assumes a fact which is denied, and because it is irrelevant and incompetent.)

197 A. Never, until about, I think, April or May, 1874.

Q. From whom did you hear it, then?

A. James A. Hoffman was the first who mentioned it to me.

Q. How long have you known James A. Hoffman?

A. I think I have known him since the early part of 1871.

Q. What was the extent of your intercourse with him from May, 1872, to May, 1874?

A. I saw him two or three times a week to speak to him on different subjects. I saw him generally in reference to rents or something connected with the market.

Q. Did he speak freely with you on such subjects?

(Objected to as leading.)

A. Yes, sir.

Q. You have stated that you were present in May, 1872, on the 25th and 31st, when the sales of stalls were opened. Do you remember who

were present on those occasions as representing the market company?

A. I remember of Matthew G. Emery, N. G. Ordway, and, I think, Mr. Chandler. I couldn't say positively as to Mr. Chandler.

Q. Were the terms of sale read and explained at those times; and, if so, by whom?

A. By Matthew G. Emery, the president, on the 25th, and on the 31st the terms of sale were read by N. G. Ordway.

Q. Do you know that permits were given to purchasers who complied with the terms of sale? If so, state fully.

A. Yes, sir; permits were given to nearly all of the dealers when they first went into the new buildings. There were a few cases where the parties got in without permits at the commencement of the market; these parties got permits afterwards, when they had complied with the terms of sale, by paying the first instalment of the bonus, and rent. I did not give these permits myself, but I was present when the most of them were given. The numbers of the stalls were entered on the permits and filled out for the term of two years [an objection was here taken to the witness stating the contents of any written or printed paper] from July 1, 1872.

Q. What was the character of the form used for permits; printed or written, or both?

A. Part of it was printed; the balance was written.

Q. Was the printed part of the blank the same in all cases, or was there a variation in them?

A. They were all the same.

198 Q. Were the terms of sale, to the best of your knowledge and belief, complied with by the market company in all cases? If not, state the facts fully.

A. They were, sir, to the best of my knowledge and belief.

Q. Was there or not any by-bidding, irregularity, or other illegality of that nature, by the market company or those who represented it, to the best of your knowledge or belief?

(Objected to, as asking the witness for a legal opinion, and because it is otherwise incompetent.)

A. There was none, sir.

Q. Were there, within your knowledge or belief, any private arrangements on the part of the market company with bidders for stalls to favor said bidders, or contrary to the terms of the sale or the charter of the company? If you know of any, state fully.

A. I know of none, sir.

Cross-examined:

I am connected with the market company now, and have been since December, 1871. I was employed by the company as a carpenter. I had the immediate charge of the mechanics and laborers during the erection of the new buildings. Since that time I have had charge of the market, in regulating and keeping the market clean, also collecting rents, making the collections from the country people around the market, up to about April 10 or 11, 1874. Since then I have still been in the employ of the company, but not as collector for the company. I assisted the auctioneer, N. G. Ordway, at the sales of stalls in 1872. The stalls were sold by choice, and as each selection was made I reported to the auctioneer the number of the stalls and the names of parties who made the selection. I was never present at any meeting of the board of directors prior to that sale. Since then I have—that is, when they met the dealers and the meetings were called for that purpose. I

don't recollect of having any conversation with any of the officers of the company with regard to the length of time for which the sales of stalls were made before the sales were made. I have never had any conversation with any of the officers of the company since the sales relating to the reason the sales were made only for two years. I have since the sales heard them say why they did sell for two years; the reason assigned was that there were a great many of the dealers who were poor men that would not be able to purchase stalls for a long
199 period. Prior to the first sale, or subsequent to that time, I have not heard any officer or member of the company state that the purchasers at the first sale had a right to remain as long as they pleased under their right at the purchase. It was some time in April, 1874, when they first talked of a resale of the stalls. It was talked of prior to that time, but not agitated so much as in April, 1874.

Q. You have stated in your direct examination that at the sale, in 1872, M'r Ordway, the auctioneer, read the terms of sale to the crowd. From what did he read?

A. I couldn't say whether it was printed or written.

Q. Did he read the charter of the company?

A. I don't recollect whether he did or not.

Q. What is the best of your recollection on that point?

(Objected to.)

A. I do not recollect whether the charter was read or not.

Q. Don't you know that it was not read?

A. I do not, sir.

Q. Was anything read except the terms of sale?

A. There were some other things read at the time—the by-laws of the company; that is all, I believe.

Q. Then you recollect of the reading of the terms of sale and the by-laws, but don't recollect the reading of the charter?

(Objected to as argumentative.)

A. I do not.

Q. You state that the rental of the stalls was announced by the auctioneer in 1872. State fully what he said on that subject.

A. The butcher stalls were fourteen dollars each per month; huckster stalls five dollars and twenty-five cents each per month, and so on.

Q. Did he state at the time of the sale, in 1872, by whom and in what manner the rentals that you have enumerated had been established?

(Objected to as irrelevant to the issues of this case.)

A. I think he did; I am not sure.

Q. What did he say about it?

A. I don't recollect what he did say.

Q. Did he say anything about it?

A. I said I think he did, but I don't remember what he said.

Q. Do you know whether the auctioneer, M'r Ordway, had in his possession on the day of the sale a copy of the charter of the company?

A. I do not.

200 Q. State how he announced the term for which the stalls were sold, whether orally or by reading a paper.

A. I think by reading a paper.

Q. Can you state what paper that was?

A. I could not state.

Q. Was it the charter of the company?

A. I could not state, but I think it was the charter of the company.

Q. Then they had a charter of the company?

A. I cannot say that it was the charter of the company.

Q. What was it?

A. I cannot say what the paper was.

Cross-examination closed, subject to be recalled for that purpose, if M'r Merrick should so desire.

Adjourned until Friday, the 23d instant, at 2 o'clock p. m., to meet at the same place.

T. A. LAMBERT,
Examiner.

FRIDAY, *April* 23, 1875.

Met pursuant to adjournment. Present, R. K. Elliot, esq., of counsel for complainant; Messrs. Birney and Chandler, counsel for the defendant, and the witness, John T. Varnell, who, being first duly sworn on behalf of the defendant, did depose, testify, and say as follows:

JOHN T. VARNELL.

Q. Please state your residence and occupation.

A. In the District of Columbia; I carry on the butchering business.

Q. Have you stalls in any Washington market; if so, in which one and how many?

A. I have three in the Seventh-street wing of the Centre Market.

Q. How long have you done business there?

A. Ever since the sale of 1872 I have done business in this market.

Q. How long have you been a butcher in this District?

A. About eighteen years.

Q. How many cattle do you average killing by the week, month, or year?

(Objected to as irrelevant.)

A. Well, to the best of my recollection, about fifteen hundred (1,500) a year.

Q. Were you or not present at the auction sales of stalls in that market in 1872?

A. I was.

Q. Who were present at those sales to represent the market company?

A. I think M'r Ordway and several other parties; I don't recollect now who else.

201 Q. Was M'r Chandler there, and M'r Emery?

A. I think I saw M'r Emery there.

Q. Were the sales regularly and carefully conducted or the contrary, to the best of your recollection?

A. I think they were.

Q. For what term of years, if any, were the sales made?

A. Two years, I think, sir.

Q. Did the purchasers receive permits after complying with the terms of sale?

(Objected to as leading, and for reasons apparent on its face.)

A. I think they did; I had to get one before I went in, I think.

Q. Did you hear at that time any objection on the part of the purchasers to receiving such permits?

A. I did not hear any.

Q. Are you or not aware what claim has been set up in the present case by James A. Hoffman, the complainant, as to his right to hold the stalls permanently on his two years' purchase?

A. I don't know.

Q. Have you or not heard from M'r Hoffman that he claims under

that purchase to hold permanently so long as he shall pay the rent of his stalls punctually under the market regulations?

A. I have not heard M'r Hoffman say so.

Q. Have you heard other stall-holders in the Centre Market make a claim to that effect?

(Counsel for the complainant inquires of the counsel for the defendant whether this suit involves the rights of stall-holders other than the complainant? The counsel for the defendant answers, "I do not admit it, the court can judge of that"; whereupon the complainant's counsel objects to the question.)

A. I have.

Q. Please state the date of the first time when you heard any such claim made by any stall-holder.

A. Well, I think within the last few months.

Q. Did you ever hear any such claim made by any stall-holder in that market before about the time when this suit was commenced in June, 1874?

A. Not before that time, I don't think.

202 Q. Are you a stockholder in any market company in this city?

Yes, sir.

Q. In which one.

A. In the Washington Market Company.

Q. When and why did you become so?

(Counsel for the complainant objects to the witness' reasons.)

A. I think when the books were first opened. I don't know why, only I had the money, part of the stock, and some I took for debt, because I could not get the money.

Q. How many shares do you own?

A. I think I own about two hundred.

Q. Have you paid up all assessments made?

A. Yes, sir.

Q. Did you take any part, and if so what, in the purchase of other stalls besides your own?

A. Well, I endorsed for some parties, and bought two stalls for my brother.

Q. What is the extent of your acquaintance among the stall-holders in the market?

A. I have a pretty large acquaintance.

Q. How far back has that large acquaintance extended?

A. For years—ever since I have been in the market.

Q. Do you or not know what the general impression among stall-holders was up to May or June, 1874, as to the time when their right to hold the stalls would expire?

(The impressions of the stall-holders are respectfully objected to.)

A. Some thought they would be sold, and some thought they would not be sold. Some thought their terms would expire in July.

Q. Please state what amount you have paid in on your shares of the stock.

A. I don't exactly recollect now, but I paid all that was assessed on the stock.

Q. Can't you figure up the different amounts paid and state the total?

A. I cannot. I paid it in two or three instalments, and I don't remember the amount now.

Q. What did you pay for the stock in the first instance—the shares you bought?

A. Some I paid fifteen dollars a share for.

Q. How much stock did you get in satisfaction of the debt?

A. Well, I got three different lots of it—about eighty or ninety shares, to the best of my recollection.

Q. At the time the auction sales were made, did you attend every sale?

A. No, sir.

203 Cross examined:

Q. You are one of the heaviest dealers in the market, are you not?

A. I think I am.

Q. Who made the sales of stalls in 1872?

A. M'r Ordway, I think.

Q. did he have any conference at the time with any other officer or member of the company?

A. I don't know, sir.

Q. Did he read the charter of the company at the time of the sale?

A. He was reading some paper; I don't know whether it was the charter or not—the terms of sale, &c.

Q. From what source did you derive the information that the sale was for two years?

A. From it being published in the papers, and their charter, I suppose.

Q. Any other source?

A. No, sir.

Q. Had you read the charter prior to the sale?

A. I think I had, sir.

Q. Prior to this sale or at the time of sale, did you hear M'r Ordway or any other officer or member of the company state that the sale was for two years?

A. Yes, sir; I think so.

Q. Did you buy for two years?

A. Yes, sir.

Q. 4. Did you buy on M'r Ordway's representation, or under the provisions of the charter?

(Objected to as asking in effect a legal opinion from the witness.)

A. I bought the stalls for two years, as they were advertised and as I read the charter. That is all I know about it.

Q. Please answer the question directly.

A. I bought them for two years.

Q. Do you decline to state whether you bought on M'r Ordway's representation or under the charter?

(Question objected to as unintelligible.)

A. I think that I have answered it. I wish you would put me straight on that question.

(Question No. 4 repeated. Question objected to as not asking for any facts within the knowledge of the witness.)

A. I think that I bought them from what I read from the charter.

Q. Did you ever compare the permit that you say the purchasers received with the charter of the company?

A. No, sir.

Q. Did you have anything to do with the permit that was issued to any other purchaser than yourself?

A. The stalls that I bought for my brother, I think I had.

204 Q. Who did you ever hear say that they had a right to remain as long as they pleased, after the purchase in 1872?

A. I th ink I heard M'r Oyster, for one. I don't remember other parties.

Q. When?

A. I think about a week or ten days ago.

Q. How much have you paid on each share of stock for which you subscribed when the books were first opened?

A. I cannot tell exactly.

Q. About how much?

A. Well, I don't remember exactly how much I paid for it now. I paid in two or three different assessments. I could tell by looking at the stock.

Q. Please look at the stock, and give the amount that you have paid on each share by reason of assessments before you close your deposition in this case.

Q. Where did you subscribe for this stock?

A. At the National Metropolitan Bank.

Q. About when?

A. When the books were first opened, I think, sir—a part of it, and a part afterwards.

Q. When was the last assessment made upon your stock?

A. I don't remember, sir.

Q. About how long ago?

A. I think when the market was building.

Q. Did you subscribe for any stock when the books were opened at the Interior Department?

A. No, sir.

Q. Have you paid your rent as a stall-holder?

A. Not all of it, sir.

Q. Is it fair and reasonable, or otherwise?

(Objected to as immaterial to the issue by M'r Chandler.)

A. Well, the rent is too high on some stalls, and it is not too high on others, I don't think.

Q. How is it upon butchers' stalls?

(Objected to as not cross-examination and as irrelevant.)

A. Well, I don't think the stalls were too high when they took off the twenty per cent.

Q. On which class of stalls is it too high?

(Objected to. All questions as to reasonableness of rent likewise objected to.)

A. Well, I think some of the outside stalls on Ninth street and Seventh street—on the outside aisle.

Q. At the time of the sale, in the year 1872, what did M'r Ordway say as to the mode of establishing the rent?

(Objected to as irrelevant.)

A. I don't know what he said.

205 Q. Did he say anything as to the mode in which it had been established?

A. I think he did.

Q. What?

A. Well, I think he said it had been established by the governor and something else which I disremember now.

Q. Were you a witness before the Senate committee on Public Buildings and Grounds during their investigation into the affairs of the market company?

A. I was up there once.

Q. Did you testify before that committee?

A. I don't think I did.

Q. Did you make any statement before that committee?

A. I think I did; something there.

Q. Were you examined by M'r Morrill or any other member of that committee?

A. I think I was asked some questions.

Q. I will read to you what purports to be a report of your testimony before that committee, on page 40 of Report No. 449, Forty-Third Congress, first session, Senate, reported June 13, 1874:

K.

Testimony of J. F. Varnelle.

Witness sworn.

I occupy three stalls. I have paid $874.50 for them for the last two years. I think the rent is too great and swallows up all our profits. There are plenty of men in the market that do not make their rent, and I know that I have not made a dollar more than enough to support my family. It takes about all to pay my rent.

By M'r Chandler:

Q. What choice of stalls did you get?

A. Second or third.

By the chairman:

Q. Do you feel that you would be obliged to pay a higher rent if the stalls were resold?

A. I made up my mind to go out of the market if I had to pay a bonus again.

By M'r Cooper:

Q. Have you ever applied to the District legislature in regard to your grievances?

A. No, sir.

By the chairman:

Q. What was the bonus in the old market?

A. I paid $350, but that was for life.

Q. You never had as good accommodation as now?

206 A. We have not got the trade for such expenses as we have to undergo. I am a butcher. The butchers generally are making no money on account of these high rents, for the Baltimore butchers can undersell us.

I would ask you if that is a correct statement of your testimony before that committee?

(Objected to by M'r Chandler, because irrelevant and as contradicting the gentleman's own witness on this point.)

A. Well, I don't remember the words I used. I cannot recollect so far back.

Q. Are these answers purporting to have been made by you in your examination before that committee correct in point of fact?

(Objected to as irrelevant and not in cross-examination.)

A. I think they were at that time, sir.

Q. Has anything transpired since that date up to the present time sufficient to render them incorrect now?

A. There has.
Q. What?
A. Well, I have found out things since then that changed it.
Q. What have you found out, when, and from whom?
A. Well, I always thought the market house company was making a great deal of money, which I do not believe now they have.
Question repeated.
A. Well, I think that I have found out that the company owes a great deal of money and are not able to pay it.
Q. Haven't you also found out that only a small percentage of the face value of the capital stock has ever been paid in?
(Objected to by M'r Chandler.)
A. Well, I do not know the amount that's been paid in; I don't remember now.
Adjourned to meet on Saturday, April 24, 1875, at 1 o'clock p. m., at the same place.

T. A. LAMBERT,
Examiner.

SATURDAY, *April* 24.

Met pursuant to adjournment. Present, R. T. Merrick, esq., counsel for complainant; W'm Birney and W'm E. Chandler, esq's, counsel for defendant, and N. G. Ordway; whereupon the last named was
207 recalled at his instance for the purpose of correcting certain parts of his former testimony, which he thereupon proceded to do, as follows:

N. G. Ordway.
At that part of my testimony between folios (MSS.) 58 and 59 I am recorded as saying, "it (the record) was made under my direction, by my clerk, who kept the minutes of the sale." I desire to correct or modify that answer by adding, that the portion of the minutes preceding the actual commencement of the sale by the auctioneer were written out by Moses Bradshaw, acting as an amanuensis for myself and E. M. Smith, the clerk, who wrote out the memorandum or minutes of the first sales as they went on. I will add that that portion written out by M'r Bradshaw for E. M. Smith and myself was done in my presence. I also meant, by the words "minutes or record," that the record was made up from memoranda in writing. Between folios (MSS.) 59 and 60, I think, my answer is not as full as I gave it; at all events, I want to add that I signed the record of advertising the sale, and that what follows in the record up to the actual commencement of the bidding was written out by Moses Bradshaw, in my presence, from memoranda made by the clerk, E. M. Smith. I also wish to add that, in referring to the by-laws, I had special reference to the clause or that portion of them which authorizes the making of regulations.
(Objected to by M'r Merrick as not properly admissible in explanation.)
I wish, also, to state that I notice in an affidavit which I have made in this case, at Warner, New Hampshire, the terms of sale were embraced in the notices; I then thought so, and have been of the impression that the large notices which were posted extensively on the roads stated the time and terms; but, as I have not been able to procure one of those notices, and find the others do not state them, but say that the terms and conditions will be announced at the sale, I may have been mistaken upon that point.

Q. Since testifying before have you looked for any original memoranda from which the record of what took place at the sale was made up; if so, with what result?

A. I have made an examination at the market office, and have been unable to find any memoranda, and think they have been destroyed or lost. I am not certain but the minutes of the sales of the
208 stalls are M'r E. M. Smith's original entries. I find on the margin my original check-marks against each name, made when I examined and found the record correct.

By M'r Merrick:

Q. From what was the copy of the record made which is filed in this case, annexed to your deposition?

A. That portion of the record relating to the posting of the notices signed by me was written out by M'r Bradshaw from memoranda then in my possession; that portion of the record relating to what took place on the day the sale was advertised to take place, and up to the commencement of the bidding, was written out by M'r Bradshaw in my presence for M'r E. M. Smith, from memoranda which he then had, and which I examined; that portion commencing with the actual sale, down to the name of J. A. Hoffman, was written by E. M. Smith, the clerk, and examined by me.

Q. Who made out the memoranda?

A. Which memoranda?

Q. The memoranda from which those entries were made?

A. M'r E. M. Smith and myself.

Q. The record is, then, a copy of your and Smith's memoranda, and the paper which you have filed is a copy of the record—is that a correct statement?

(Objected to by General Birney, the witness not having stated that the record was a copy of the memoranda.)

A. That portion of it preceding the actual bidding or sale of stalls was written out from memoranda; the record after the bidding took place may have been written by M'r Smith as an original record, and the whole, as appears in the book up to the name of M'r Hoffman, has been copied and put in this case with my deposition.

Q. Was the record, as you call it, from the beginning down to the commencement of the sale of stalls copied from memoranda, or written out from memoranda after the sale had taken place?

Witness, after examin'g the book——

A. It was written out from memoranda, and it may have been copied, word for word, at or about the time of the sale from memoranda made at the time specified.

Q. When was it put in the book?

A. It was fastened together in sheets and placed in the book at the time of the sale, and so continued until last Monday, I think it was just before I came here to testify, and fearing it might get separated
209 or lost I pasted it on these blank leaves, as now appears in the book (and which M'r Chandler desires it to be noted is now produced for inspection); I will add that the paper or leaves in the front portion of the book upon which this record is pasted was unfit to write upon, hence I considered it more likely to endure and remain perfect by preparing it as I have done.

N. G. ORDWAY.

MOSES BRADSHAW.

Moses Bradshaw, a witness produced on behalf of the defendant, being duly sworn, did thereupon depose, testify, and say as follows:

Q. What were your relations to M'r Ordway at the time of the auction sale of stalls in 1872?

A. I was a short-hand writer, but had no relations with him at that time as I now have; he called upon me frequently to do writing for him.

Q. Will you look at the book now shown you, from which an exhibit to M'r Ordway's deposition has been copied, and state whether or not the writing therein prior to the list of purchasers of stalls is in your handwriting?

A. It is, except M'r Ordway's signature.

Q. State under what circumstances and when you wrote those pages and what became of them.

A. This statement was dictated to me; I took it in short-hand and afterward wrote it out on these papers that are pasted in here; when it left me they were all attached together as one sheet; the time when this was done may have been on May 25, 1872, as I see this paper is headed, but more likely within four or five days.

Q. Are these sheets a correct transcript of your short-hand notes?

A. I believe they are.

Cross-examined by M'r Merrick:

Q. Where are those notes?

A. It's been three years since this was written, and I don't know where they are.

Q. When was the substance of that paper dictated to you?

A. As I said before, on or about the date which it bears.

Q. Was it before or after the sales in the market?

A. I wasn't present at the sales in the market.

Q. Do you know when the sale took place?

A. The exact day? No, sir.

210 Q. I observe that the paper to which you have referred bears date the 25th day of May, 1872, and further on in the paper I notice the time and place adjourned to, viz, May 31, 1872; on which of these dates was it that the paper was dictated to you?

(Objected to by M'r Chandler as assuming erroneously that the witness has asserted that it was dictated to him on either of those days.)

A. I can't be positive, as I said before; I haven't the notes by which I can fix the exact date, and it must have been a short time after, or on or about that time.

Q. Was it all dictated to you at one and the same time?

A. It's one statement.

Q. Where were you at the time it was dictated to you?

A. I may have been in the market office or at M'r Ordway's house; it was dictated from memoranda.

Q. How long after you made the short-hand notes did you write it out?

A. A short time after; within two days.

Q. Who dictated it to you?

A. M'r Ordway down to where his name is signed, and I think M'r E. M. Smith dictated the rest.

Q. Did they both, Ordway and Smith, dictate to you on the same day?

A. I think they did; after looking at it, I think it was dictated to me

in the evening at M'r Ordway's house; I was in the habit of meeting——

(Witness' habits objected to by M'r Merrick.)

——at that time M'r Ordway and the market officers at his residence.

Redirect by M'r Chandler:

Q. State whether or not you mean that the whole, which you find written out by you in the book, was dictated to you on the same occasion at M'r Ordway's house.

A. It was, whether at the house or at the market office.

Q. State whether or not M'r Ordway and M'r E. M. Smith were both present during the dictation of the whole?

A. They were.

Q. State whether or not the sheets, after you had written them out, were examined by both in your presence.

A. Yes.

Recross-examined:

Q. Are you positive that M'r Ordway and M'r Smith were both present during the whole of that dictation?

A. I am positive, because it was all made out in one statement.

211 (Answer objected to, and question repeated by M'r Merrick with the addition)—

I ask for your recollection of the fact and not for your reason.

(M'r Chandler asks the examiner to state to the witness that he is at liberty to give the reasons why he is positive.)

A. That's my recollection.

Q. Are you positive that after M'r Ordway had dictated down to the part where his name is signed; that he didn't leave the room whilst M'r Smith was dictating or before he finished?

A. I can't recollect; I don't think he did; he had not, and is not in the habit of so doing.

Q. Have you any recollection about it?

A. So far as I have stated.

Q. Independent of M'r Ordway's habits, have you any recollection that he didn't leave the room?

A. Of course, I can't swear positively.

By M'r Chandler:

Q. On reflection, what is your best impression as to whether M'r Ordway was or was not present during the whole dictation either by himself or M'r Smith?

(Objected to by M'r Merrick because witness' impressions are not competent evidence.)

Question is thereupon modified by striking out "impression" and inserting "recollection."

A. My best recollection is that he was present all the time.

M. BRADSHAW.

Sworn to and subscribed before me this 24th day of April, 1875.

T. A. LAMBERT,
Examiner.

Thereupon, after the partial cross-examination of W'm E. Chandler, which appears on folios 32a, 32b, 32c, 32d, et seq., of the MSS., adjourned to meet on Monday, the 26th day of April, 1875, at the same place and hour.

T. A. LAMBERT,
Examiner.

WILLIAM E. CHANDLER.

William E. Chandler, a witness in behalf of the defendant, being duly sworn, deposes and says (subject to cross-examination):

212 Q. What connection, if any, have you had with the Washington Market Company?

A. I have been a stockholder, director, and principal counsel for the company since its organization, and the subscription for its stock in November, 1870.

Q. What connection had you with the company in May and June, 1872?

A. The same as above stated, and I also advised and acted for the company in connection with the auction sales of its stalls for two years from July 1, 1872. M'r Caleb Cushing was also stockholder, director, and advisory counsel, however, and M'r W'm A. Cook also gave an opinion as to the right of the company to sell a choice of stalls.

Q. Who were the persons acting as counsel for defendant in relation to those auction sales in 1872?

A. Myself, with the assistance of Mess'rs Cushing and Cook, as stated in the last answer.

Q. Were the terms of sale adopted in pursuance of the advice of counsel?

A. They were.

Q. What were they? State in general terms.

A. They were the terms stated in the votes passed at the directors' meeting of May 23, 1872, and also the further particulars read and stated at the sale by M'r N. G. Ordway, the auctioneer.

Q. Who prepared the forms for the business papers to be used in the contract between the Washington Market Company and the tenants of its stalls?

A. I prepared them.

Q. What were those forms?

A. The only paper executed by the market company to a purchaser at auction was the permit, a copy of which is annexed to the answer, and a blank form of which I annex hereto, marked Exhibit F. The only paper signed by the purchaser beyond the notes which he may have given for bonus was a copy of the market regulations and the following agreement appended thereto:

Signatures to market regulations.

The undersigned hereby agree to occupy stands or stalls in the buildings and grounds of the Washington Market Company, subject to a full compliance with all laws of Congress and of the District, the charter and by-laws of the company, and the regulations of the company as from time to time established.

213 EXHIBIT F.

Permit. Stand No. .

WASHINGTON MARKET COMPANY.

is hereby entitled to occupy stand No. , in the buildings of the Washington Market Company, as a for the term of two years from July 1st, 1872, paying therefor the quarterly rent, in advance.

of dollars; subject to the conditions of the charter and by-laws of the company, and the regulations of the company as from time to time established.

This permit will be of no effect until the holder has signed the regulations, and paid all arrearages due the company, and it is transferable only in writing, and upon a surrender hereof.

WASHINGTON MARKET COMPANY,
By M. G. EMERY,
President.

Dated , 187 .

In addition to the forms above there were also prepared the schedule of the rentals, the terms of sale, and the market regulations adopted by the directors at the meeting of May 23, 1872, which were open to the inspection of the purchasers.

Q. Was there any paper to be signed by tenants binding them to hold their stalls for any specified length of time?

A. There was not.

Q. Was there anything in the forms to be signed by the Market Company which implied the obligation on the part of any tenant to hold his stand for any time longer than he chose to pay the quarterly rent therefor?

A. There was not.

Q. Was there or not in the market regulations any language implying such an obligation on the part of the tenant?

A. There was not.

Q. On what construction of the law by counsel were all the forms of contract between defendant and tenant prepared and adopted by the company?

A. Upon the construction that section 2d of the charter of May 20, 1870, bound the company, upon a sale of any stall at auction, to allow the purchaser to hold possession for the term for which the sale was made, but bound the purchaser to occupy only at his own pleasure from month to month, or quarter to quarter, paying the monthly or quarterly rental as the same might become due. It was upon this construction, that the company was bound for the period for which the sale
214 was made, but could not bind the purchaser to occupy beyond his own pleasure; that the contract adopted was made in the form of a permit, and not in the form of an indenture of lease, binding both parties for the term.

(Question and answer objected to.)

Q. Were you present at the auction sales of stalls by the defendant in May and June, 1872?

A. I was present assisting the president, and M'r Ordway the auctioneer.

Q. Have you read a record of the proceedings at the said auction sales made under the direction of N. G. Ordway, signed by E. M. Smith, clerk, marked Exhibit G, and here shown to you?

A. I have.

Q. Does the record present a true statement of the proceedings at those auction sales, to the best of your knowledge and belief?

A. It does.

Q. What steps were taken to communicate terms of sale at those auction sales to the general public and to purchasers?

A. They were read at the commencement of the sale and at each ad-

journment, and were fully communicated to all inquirers at the market office.

Q. How were the rentals attached to the different classes of stalls made known?

A. They were of record in the clerk's office, and shown to all inquirers; they were also openly announced at the auction sale, and at each adjournment.

Q. At what time did you first hear of a claim made by any purchaser of a stall that he had a right under the statute to hold indefinitely so long as he paid his rent punctually, such holding to be by virtue of the statute charter of the defendant?

A. I first heard of this claim in the spring of 1874, when the company began to talk of advertising the sale of stalls for another term, and when the occupants went to Congress to endeavor to procure the passage of an act declaring that their purchases for two years should be deemed purchases forever.

(Question and answer objected to.)

W'M E. CHANDLER.

M'r W'M E. CHANDLER, being recalled at a later date for cross-examination, thereupon testified further, as follows, in answer to questions propounded by M'r Merrick:

Q. You have stated in your examination-in-chief that you were
215 director, stockholder, and principal counsel of defendant company; have you any other office in that corporation?

A. Not that I now remember.

Q. Has your board of directors any record of their proceedings?

A. They have.

Q. Do you keep a stock-book?

A. We do.

Q. How are transfers of stock made?

A. Upon the books of the treasurer, M'r Moses Kelly, or by endorsement on the backs of the certificates.

Q. State how shares are transferred.

A. Upon application to the treasurer, and a transfer by the owner, either on the back of his certificate or on the transfer book, new certificates are issued representing the new ownership.

Q. Who constitute the present board of directors?

A. M. G. Emery, N. G. Ordway, W'm E. Chandler, E. R. Tinker, Fitzhugh Coyle, Hallett Kilbourn, S. S. Smoot, Caleb Cushing, T. C. Connolly, R. B. Clark, J. H. Ela, P. S. Smith, and Moses Kelly; there are thirteen.

Q. Where do they reside?

(Objected to as irrelevant and not competent in cross-examination.)

A. All in Washington, except M'r Ordway, M'r Tinker, and myself, and possibly M'r Smith; I think, also, M'r Ela considers himself a resident of New Hampshire; M'r Cushing's residence, I believe, is in Virginia; all directors, except M'r Tinker, have more or less temporarily resided in Washington, though such may not be their legal residences.

Q. What proportion of the stock is owned by M'r Tinker?

(Objected to.)

A. M'r Tinker is, I suppose, the owner of about 2,600 shares standing in my name; there are 20,000 shares of the stock in all, of $50 each.

Q. Is it all issued?

A. It is.

Q. How much has been paid in on it?

A. Ten per cent., making $100,000.

Q. Were you connected with the company immediately upon the passage of the charter?

A. I was not. I think my first connection with the company as shareholder was at the time of subscription to the second company, organized under the 15th section of the charter.

Q. When was that?

A. In October or November, 1870.

Q. What connection had you in preparing the original charter and getting it passed through Congress?

(Objected to.)

216 A. Not the slightest connection whatever.

Q. Who prepared this charter?

A. I do not know.

Q. Had you no knowledge whatever upon the subject?

A. None whatever, according to my best recollection.

Q. Who is L. F. and R. Hildreth and F. H. Hildreth, and where do they reside?

(The questions on cross-examination, except the first two, objected to by Gen. Birney at the time as irrelevant and not in cross-examination.)

A. The female heirs of Fisher A. Hildreth, of Lowell, Mass.

MONDAY, *April* 26, 1875.

Met pursuant to adjournment. Present, R. T. Merrick, R. K. Elliott, esqs., counsel for complainant, and W'm Birney, W'm E. Chandler, esqs., counsel for defendant, whereupon the cross-examination of the said W'm E. Chandler was continued by M'r Merrick, as follows:

Q. Were you at any meeting held at the Interior Department by the stockholders of the Washington Market Company prior to November, 1870?

(Objected to by General Birney as irrelevant to this cause.)

A. I think I was present at the subscriptions for stock which took place at that department.

Q. When did that meeting for subscriptions to stock take place?

(Objected to as above.)

A. There were two subscriptions—one in the summer and one in the fall; I can't remember the exact dates.

Q. Was there an organization effected at the first meeting held for subscriptions to the stock?

A. I think there was not.

Q. Was there an organization effected after the first meeting for subscriptions to the stock and before the second meeting?

(Objected to as above.)

A. The two meetings for subscription were of different organizations—that in the summer was opened by the corporators named in the first section of the act; subsequently thereto there was a meeting of the subscribers and an organization; the second subscription in the fall was under an association formed under section 15 of the act, which

217 also subsequently became duly organized, and is the present company defendants.

Q. Were officers elected prior to the organization of the present company, and were you elected treasurer of such original company?

A. Officers were, I think, elected; I am not certain whether I was acting treasurer or not—that I can readily ascertain.

Q. How can you refresh your recollection in regard thereto?

(All questions relating to any organization under the charter of defendant objected to by Gen. Birney as irrelevant to the issues.)

A. By looking at papers and memoranda in my possession.

Q. What is your best recollection now?

A. My impression is that I was acting treasurer.

Q. Then you were a shareholder in that original organization, were you not?

A. I do not recollect.

Q. Did not the charter require that every officer should be a shareholder?

(Objected to by Gen. Birney.)

A. It so appears that the treasurer must be from the directors, who must be stockholders; therefore, I presume that I held, at least, one share of stock; I am not positive, however, about any of these facts, and should prefer to answer positively only from the record, or after seeing it.

Q. You are positive, however, that you attended the meeting that was held at the Interior Department in the summer, are you not?

A. I am confident that I did.

Q. Did you attend in your own interest, or in the interest of somebody else?

A. I attended, I think, at the request of M'r Carlos Pierce, of Boston, and as his counsel.

Q. Had you been representing previously his interest in connection with or in view of this charter?

A. I had not.

Q. Was your attendance at that meeting your first connection in any way with this charter or of the interest acquired or to be acquired under it?

A. It was, according to my best recollection and belief.

Q. You have stated in your examination-in-chief that you have read a record of the proceedings at the auction sales made under the direction of N. G. Ordway, and marked Exhibit G, and that it presents a true statement of those proceedings; were you present during the entire time that that sale was going on?

218 A. I think I was present May 25, when the sale was opened, but no sales made; only an adjournment took place to May 31. I was also present on the day, which, I think, was May 31, when the actual sales commenced. I was present when that sale was opened, and the nature and terms of sale were stated, and during a large portion of the biddings and sales. I think I was present during all or nearly all the sales of butcher-stalls on that day; as the sale progressed the auctioneer and bidders moved about to different stalls in the market. I think I went with them during nearly all the sales, but possibly later in the day; there may have been some sales when I was not present, although I do not recall any absence of mine.

Q. When was the rental of which you have spoken in your examination-in-chief fixed and determined upon?

A. It was fixed by the directors of the company at a meeting held a few days before the sale, the record of which is already in this case, put in by M'r Whitney, the clerk. It was fixed by Henry D. Cooke, governor of the District, representing the District authorities, between that directors' meeting and the sale.

Q. What do you mean by saying that the rental was fixed by the directors of the company?

A. I mean that the directors so voted to fix them in accordance with the second section of the charter.

Q. Were those rents fixed in accordance with all the provisions of the second section?

(Objected to by Gen. Birney.)

A. They were fixed by the governor of the District instead of the mayor and common council of Washington, and also by the directors of the company. Congress had abolished the mayor and common council, and therefore affixing by the directors of the company alone would have been in accordance with the charter; but the company in addition procured the approval of the governor of the District as the most appropriate and only available representative of the District authorities. The fact that the governor of the District had approved the rentals was stated by M'r Ordway at the opening of the sale, when he stated what the rentals would be.

Q. The governor, then, only approved what the directors had done?

(Objected to by Gen. Birney as argumentative.)

219 A. Schedule of the rentals, as fixed by the directors, was submitted and explained to Governor Cooke, who affixed his signature thereto, and thus fixed, as well as approved, the rentals.

Q. How do you know the schedule was explained to the governor?

A. I took the schedule to him and explained it myself. Possibly other officers of the company went with me, though I do not now remember.

Q. Did he make any modification of it as presented?

A. Not that I remember.

Q. Were you aware that the District of Columbia, as a body corporate in the form of government, in which Governor Cooke was governor, was declared by law to be the successor to the mayor, board of aldermen, and common council?

A. I am not certain how fully I then understood the effect of the District organic act.

Q. Did you suppose that the governor had succeeded to the duties of both the mayor and common council under the corporate organization?

(Objected to by General Birney as an unnecessary introduction of the Socratic method of argument.)

A. I repeat that I was not aware of the extent to which one District officer, under the organic act, succeeded another officer of the late city government. The market was ready for occupancy, and it was necessary that it should be occupied and its stalls sold. The mayor and common council were abolished. We did the next best thing that seemed practicable.

Q. Was not the legislature of the District at that time in session?

A. I do not remember.

Q. What was the exact date at which the rent was fixed by the directors, and what was the exact date it was approved by the governor?

A. I have stated that I could not recollect the exact date, but I think during May. I will ascertain the date by looking at the records.

Q. Did you not, in giving your opinion as to the manner in which the corporation should comply with the requirements of the second section of the charter as to fixing the rents of the stalls, examine the organic act creating the government for the District of Columbia to determine what public authority should co-operate with the directors in fixing the rents?

A. I may or may not have done so; I do not recollect.

Q. What put it into your head to ask the governor to ratify what the directors had done in that regard?

220 (All questions in relation to the methods of fixing the rents objected to by General Birney.)

A. It occurred to me that it would be well enough.

Q. Did it occur to you to ask the popular branch of the legislature to ratify what the directors had done?

A. I do not remember that it did.

Q. Do you remember that it didn't?

A. I do not remember whether it did or did not.

Q. Did you have no talk with any officer of your company or any of the board of directors on the subject of the ratification by the legislature of the rates fixed by the board?

A. I do not remember that I had.

Q. Can you say that you had not?

A. I do not remember whether I had or had not.

Q. Did you have any idea in your own mind at that time, when making up your opinion as to what ought to be done, as to applying to the legislature to ratify or not, applying to the legislature?

A. I do not remember whether I had any idea on that precise point or not. My opinion was that the directors could fix the rent; that the amount of that rent being known to the purchasers of the stalls at the time of the auction sales, and they bidding with knowledge thereof, and entering into possession with that knowledge, would be bound to pay the amount of rental. As a matter of wise precaution, however, I deemed it prudent to submit the rentals to Governor Cooke for his examination and to have him approve and fix the same quantum valeat. In fact, the rentals thus fixed were announced at the auction sale, but no objection was made to the mode of fixing them.

I have procured during the examination the original paper signed by the president of the company, Mr. Emery, and Governor Cooke, fixing the rents, and annex a copy:

EXHIBIT X.

Annual rent of the stalls and stands in the buildings of the Washington Market Company on Seventh, Ninth, and B streets, Washington.

Description of stalls and stands.	Annual rental.
Each butcher-stand, 6 by 8 feet, making 48 square feet, $3.50 per sq. foot (and at the same rate for any additional space)	$168 00
Each bacon dealer, butter dealer, and bread dealer's stand of above size, $2.25 per sq. f't	108 00
221 Similar stands, 6 by 6 feet, making 36 sq. f't	$81 00
Each huckster's stand, 6 by 8 feet, making 48 sq. f't, $1.75 per sq. foot	84 00
Similar stands, 6 by 6 feet, making 36 sq. f't	63 00
Each miscellaneous stand, 6 by 6 feet, making 36 sq. feet, $2 per sq. foot	72 00

The rents to be payable quarterly in advance.

The foregoing rates may be diminished by the company in its discre-

tion, but shall in no case be increased without the consent of the District authorities.

Approved April 18, 1872.

WASHINGTON MARKET COMPANY,
By M. G. EMERY,
President.

Approved.

H. D. COOKE,
Governor of the District of Columbia.

I find, on examining it, that I have erroneously stated dates in the previous part of my deposition, when I said that Governor Cooke fixed the rentals between the directors' meeting and the sale. The rents were informally fixed by the company in April, and the paper signed by M'r Emery and Gov. Cooke during that month—on or about the 18th. The formal vote of the directors was not passed and made of record until a few days before the sale.

Q. How long after the signature by Emery, as president of this paper, did Cooke sign it?

I cannot tell; very likely several days.

Q. Did you leave it with the governor, or did he sign it in his interview with you?

A. It is my impression that about the time we determined the rents, early in April, Governor Cooke visited the market, and examined the same and the stalls; that then the paper was prepared and signed by M'r Emery with the day of the month left blank, and that when Gov. Cooke signed the day of the month was filled in.* When Gov. Cooke signed I may have been present, or, the paper having been left with him, he may have signed and sent it to me.

(The part of the answer preceding the * objected to by M'r Merrick as not responsive.)

Q. In whose handwriting is that paper?

A. In the handwriting of my short-hand writer, M'r S. W. Curriden, except the signature and the day of the month.

222 Q. Specify more particularly the part not in his handwriting; do you mean simply the figure' 18 following the month "April"?

A. I do mean that and the signatures.

Q. In whose handwriting is the figure 18?

A. My own.

Q. Was Governor Cooke a stockholder in the company on the 18th April, 1872?

A. He was not; he went out as president and stockholder quite a while previous, after which M'r Emery was elected president.

Q. When did Governor Cooke cease to be a stockholder?

A. Quite a while previous; I do not remember the exact date; I should think, however a full year, but I may have been mistaken.

Q. You have stated that you have stock and transfer books, have you not?

A. We have.

Q. Will you produe them?

(Objected to by General Birney.)

A. I will produce them for the purpose just orally stated by the counsel, of showing when Governor Cooke ceased to be stockholder.

Q. At the sale did M'r Ordway announce that he would proceed to sell the stalls, read the notice of sales, and explain that, under the charter,

they were obliged to sell the right to occupy the stands at public auction?

A. I think substantially that statement, with others, was made pretty strongly.

Q. Do you know what rent had been paid previously by the occupants of stands in the old market, relatively to the rent in the new, according to the terms you have stated as having been fixed upon?

A. I had a general knowledge, but probably, without referring to figures, could not make a useful statement on the subject.

Q. Was it greater in the new market than it had been in the old?

A. According to my recollection the character and size of the stalls were different in the two markets. I think the price per square foot was somewhat the highest in the new market buildings.

Q. Did M'r Ordway not state at the sale that under the charter the directors of the Market Company and the corporate authorities were required to fix the rentals of the stalls, and that under the present government it had been fixed by the directors and the District authorities?

A. I do not wish to state precisely how M'r Ordway made the announcement. It was substantially as follows: That the rentals had been fixed by the Market Company, and that they had also been as-
223 sented to or fixed by some representative of the District government, the mayor and common council having gone out of existence. He may have named Gov. Cooke. I do not positively remember.

Q. Did he state, after stating or reading the rate of rentals, substantially as follows: "It might seem to the dealers that this was pretty high rental, yet when they consider that the company had to pay $20,000 to the poor, $12,000 taxes, and paving taxes, which already amounted to $20,000, they can safely calculate that the company would have to pay from $30,000 to $40,000 per year?"

A. I would not be willing to verify the substantial correctness of the above statement. I think he stated the obligations of the Market Company as reasons for the rental, but do not recall the figures given.

Q. You have verified as true from your recollection the statement of what he said and did, as contained in the long exhibit attached to his testimony, and stated that you were present during the entire or nearly the entire time; can you not now recall whether or not he enumerated the obligations and liabilities as set forth in the question, and stated that the rent was high, or would seem high, but was necessary on account of their existence?

A. That statement was carefully prepared as a contemporaneous record of the material facts that took place at the sale, with which record I was familiar at the time it was made; therefore I have no hesitation in verifying its substantial correctness by looking at it, while I have a very natural hesitancy about swearing to the accuracy or inaccuracy of other statements prepared when, where, and by whom I know not.

Q. Was the company, at the time of the sale of stalls, under an obligation to pay $20,000 a year to the poor of the city?

A. I think it was.

Q. Is it now under that obligation?

A. No, sir.

(Question objected to as irrelevant by General Birney.)

Q. Did M'r Ordway state at the time of the sale of the stalls that the company hoped when the main building was occupied they would be able to cut down the rent?

A. Possibly, although I do not recall it.

Q. Did M'r Ordway make fair promises and plausible representations as to the future condition of the market and the construction and occupancy of the main building to satisfy the dealers with the rent,
224 and induce them to purchase at liberal prices?

A. He made statements from time to time predicting prosperous markets and success to the enterprise, undoubtedly for the purpose of stimulating bidders; I cannot state that he made promises, nor do I recall that he spoke of the main front building that was to be erected.

Q. Has that building been erected?

A. It has not; in pursuance of an act of Congress so providing and appropriating $75,000 therefor, the front land has been transferred to the District of Columbia for the erection of a District government building thereon; about the time of this transfer the company, I think, increased its deduction to the market-men for paying their rents in advance, I think, up to twenty per cent.

Q. Do you mean to say that they reduced their rent twenty per cent.?

A. They reduced the rent for prompt payment in advance, making the whole reduction twenty per cent.; I do not remember what the previous deduction, if any, for prompt payment had been.

Q. Was this done in conformity with any promise, statement, assurance, representation, or contract made by anybody whomsoever, whether with or without authority, that you know of?

A. It was not done in pursuance of any contract that I remember; at the time the transfer was made to the District the Market Company informed M'r Shepherd, vice-president of the Board of Public Works, that it was their intention to reduce the rentals, and I think it was done in pursuance of this intention in the form I have indicated.

Adjourned until Tuesday, the 27th day of April, at 7 o'clock p. m., to meet at the same place.

T. A. LAMBERT,
Examiner.

TUESDAY, *April* 27.

Met pursuant to adjournment; whereupon, at the instance of the examiner, a further adjournment was declared to Wednesday, April 28, to meet at the same place at 12 o'clock m.

T. A. LAMBERT,
Examiner.

WEDNESDAY, *April* 28, 1875.

Met pursuant to adjournment. Present, R. T. Merrick and R. K. Elliot, esq's, counsel for complainant, and W'm E. Chandler, esq.; where-
225 upon the cross-examination of the latter was resumed, by M'r Merrick, as follows:

W'M E. CHANDLER.

Q. What were the terms of transfer of property to the District, of which you have spoken, and what was the property transferred?

(Objected to.)

A. The property transferred was the land on Pennsylvania and Louisiana avenues, 86 feet deep, together with the right to use, in common with the Market Company, as a passage-way and court-yard, the land between such ground and a line ten feet north of the brick market buildings; the transaction was in writing, and the terms fully appear of record and in print.

Q. Look at the papers now handed to you and state whether they are the writings in reference to the transaction of which you speak.

A. They appear to be the same, but if copies are to be annexed, verified by me, I prefer to annex copies, which, being requested, I now hand to the commissioner, marked Exhibit T, attached hereto.

(Objected to by Gen Birney, on the ground that the annexation of the papers is irrelevant.)

(This exhibit is not printed. It is executive document No. 1, house of delegates of the District legislature, containing message from the governor, transmitting copies of the agreement between the governor and board of public works and the Washington Market Company, dated March 18, 1873.)

Q. Was the land conveyed to the District of Columbia by the company, described in the last exhibit, the ground upon which the Market Company under its charter was to have erected the main building of said company?

A. I am not prepared while testifying in this case, to define the rights of the Market Company or its obligations in connection with the land in question.

Q. Have they erected all the buildings designated in the charter and set out in the plat or drawing exhibited at or about the time of the passage of the charter and referred to in the charter?

A. The company has erected no building on Pennsylvania and Louisiana avenues. What its obligations were under its charter, how far they have been modified by further legislation and subsequent
226 transactions, I am not now prepared to state, nor do I perceive the relevancy of the inquiry.

Q. I do not ask for an opinion as to the obligations of the company, but for a fact; was any building on Pennsylvania and Louisiana avenues described on the plat referred to in the charter?

A. I do not remember ever to have seen the plat, and therefore cannot say. The charter itself appears of record and speaks for itself.

Q. Do you mean to say that you never did see that plat?

A. As stated above, I do not recollect that I ever did.

Q. As counsel for the company were you never consulted, or did you never advise in regard to its obligation as to the erection of structures under the charter?

(Objected to.)

A. I was consulted and did advise as to the erection of the buildings which the company erected, in a general way, with the architect, directors, and building committee.

Q. In those consultations did you not see the plat?

A. I think not; I, of course, saw the charter, and relied upon the architect for detailed information.

Q. Has the building designated in the schedule to the charter as "main building on the northern front" been erected?

A. I have stated that no building has been erected by the Market Company on Pennsylvania or Louisiana avenues; I decline to be interrogated as to whether the company has or has not complied with all the terms and conditions of its charter, and the modifications thereof, so far as concerns the erection of buildings, unless the relevancy of such testimony to this case is pointed out to me, or unless I am directed by the court to answer interrogatories of this character; to avoid misapprehension, however, as the subject has been introduced, I desire to state, that, to the best of my knowledge and belief, the company has complied with all the provisions of its charter and the laws of Congress.

(Answer objected to by M'r Merrick as not responsive.)

Q. As you have volunteered the statement under oath that, to the best of your knowledge and belief, the company has complied with all the provisions of its charter and the laws of Congress, you will please state whether it has complied with that provision in its charter which required the erection of a main building on its northern front, and, if it has not erected such building, state how you reconcile such omis-
227 sion with your volunteer assertion that it has complied with all the provisions of its charter.

(Objected to as requiring a legal opinion as to the effect of an act or acts passed by Congress subsequent to the charter; as being matters for inquiry by the United States, and not relevant to any issue in this cause.)

A. The charter has been modified by two subsequent acts of Congress; as above stated, I decline to go into a consideration of the obligations of the company under all the laws of Congress with reference to the erection of buildings, unless its relevancy is shown to the counsel for the company, or unless directed by the court.)

Q. You have volunteered the statement, without being asked, that the company has complied with all the requirements of its charter; do you mean to be understood as now declining to say whether or not the company has erected the main building on the northern front, referred to in the schedule to the charter?

(Objected to as irrelevant by General Birney.)

A. I stated that I believed the company had complied with all the obligations of its charter and the laws of Congress; I stated that it had erected no building on Pennsylvania and Louisiana avenues; I decline, unless its relevancy be shown, or unless directed by the court, to answer inquiries as to specific clauses of the charter or laws of Congress; declining to do this I deem it my privilege, in order to avoid any contrary inference, to state generally my belief that the company has complied with all its legal obligations.

Q. Was your volunteer statement in the particular referred to in your last answer limited to "belief" alone, or did it not also extend to "knowledge"?

(The commissioner is requested to read the statement referred to before answer by the witness.)

A. Belief based on knowledge.

Q. My inquiries relate to your knowledge of facts, and not your belief or construction of papers; and I ask as a fact, whether the company has erected on the northern front the main building referred to in the schedule to the charter?

(Objected to as having been answered twice already and as irrelevant.)

A. I have distinctly stated that the company has erected no building on Pennsylvania or Louisiana avenues; if to answer the question
228 further would not involve my belief or the construction of the charter as to the meaning of the words "main building on the northern front," then I understand neither language nor law.

Q. What streets bound the northern front?

A. I cannot tell without looking at the charter to see what is meant by "northern front."

Q. Are you familiar with the grounds transferred by the charter to this company?

A. I am.

Q. Will you state how they are bounded according to any known designation on the plat of the city?

A. As conveyed by section 2 of the charter they were bounded by Seventh street, Pennsylvania avenue, Louisiana avenue, Ninth street, and B street.

Q. Seventh street is to the east of the grounds, is it not?

A. Easterly.

Q. Ninth street is to the west, is it not?

A. Westerly.

Q. B street to the south, is it not?

A. Southerly.

Q. Now, what relation does Louisiana and Pennsylvania avenues bear to it in point of direction?

A. As counsel is inclined to be sharp it will be necessary for me to know what he means in the question by the word "it."

Q. I mean the ground transferred to the company under the charter.

A. Northerly.

Q. Is there any building on the northern front of the property transferred to the company under the charter?

(Objected to, and likewise all questions relating to building on the northern front of the property referred to.)

A. There is not; in other words, as I have freely stated and the counsel well understood, there is no building on Pennsylvania or Louisiana avenue.

(The last part of the answer objected to by M'r Merrick.)

Q. Was it not understood at the time of the sale of stalls in May or June of 1872, that a building was to be erected on the northern front of the property referred to in the last question?

A. I have no doubt it was generally so understood.

Q. Had there been at that date any act of Congress modifying the charter as originally passed?

A. There had; the resolution of December 20, 1870.

Q. Was the statement made to Governor Shepherd, in reference to the reduction of rents, made pending the negotiations which ended in the execution of the papers attached to your testimony marked T?

229 A. It was made to Governor Shepherd, then vice-president of the board (Governor Cooke being president), about the time of those negotiations.

[Since my previous answer on this subject, day before yesterday, I have refreshed my recollection on this subject, and desire to make a more accurate statement. There was no contract, agreement, or understanding in connection with those negotiations to the effect that the company should reduce the rents. To state accurately: M'r Shepherd was informed that if the District went on to build the front building it was the expectation of the company that they would be able, and it was their intention to reduce the rentals in the form of a liberal discount for payments of rents in advance. As matter of fact, the only deduction for payments in advance which the company had ever made was four per cent. for the first quarter of 1873. After April 1, 1873, the company allowed a discount of ten per cent. for that quarter (the second quarter of 1873) for a three-months' advance payment if made within ten days after the commencement of the quarter. A similar discount, increased to twenty per cent. for quarterly payments in advance made within ten days after commencement of quarter, was allowed, commencing with the third quarter of 1873, and extending to July 1, 1874. None of these discounts were voted by the directors. They were made by the superintendent and

clerk after oral conferences with the directors, and the allowance was discontinued after July 1, 1874, except to some of the dealers who repurchased their stalls at auction and paid quarterly in advance. Since October 1, 1874, it is my impression that no allowances for discount have been made.]

(All the answer in brackets objected to as not responsive and improper, by Mr Merrick.)

The witness thereupon stated that he desires the statement just made by him to be received as an explanation and correction of his testimony given before the last adjournment.

Q. How have you refreshed your recollection since you last testified?

A. By looking at the collection-books of the company where the deductions actually made appear, and by reflection on the subject.

Q. Do not the collection-books show that the 20 per cent. deduction commenced immediately after the date of the agreement between the market company and the board of public works, dated March 18, 1873?

A. They do not, as I examine them. The discount for the next
230 succeeding quarter appears to have been 10 per cent., and the discount of 20 per cent. appears to have commenced with the third quarter of 1873, which would be July 1.

Q. Did not the date for renting after the purchase of stalls begin July 1, 1872?

A. It did.

Q. Then the deduction of 20 per cent. commenced with the commencement of the second year, did it not?

A. It so appears.

Q. Was it not stated to Governor Shepherd that if this agreement was made 20 per cent. would be deducted, beginning with the beginning of that year?

A. I recollect no such statement. There was no specific discount for advance payments talked about between Mr Shepherd and myself.

Q. You did talk about a reduction, a discount, however, did you not?

A. We talked about the intention of the company if it should prove able to make a liberal discount for advance payment. I have endeavored to give as accurate a statement as possible of the substance and effect of our conversation.

Q. Was there anything that occurred between the date of the agreement, the 18th of March, 1873, and the 1st of July following that increased the ability of the company to make the reduction, or showed it to be more able to make it?

A. On the 1st of April the front land on Pennsylvania and Louisiana avenues passed into possession of the District, and the directors deemed that the condition of the company would justify an enlargement of the policy of making discounts for advance payments, which had been inaugurated in the first quarter of 1873; it was, of course, and still is, very much for the advantage of the company to obtain advance payments of the rent.

Q. The front land on Pennsylvania and Louisiana avenues passed into the possession of the District pursuant to the agreement with the board of public works, did it not?

A. It passed into the possession of the District, and the governor and board of public works commenced the excavating of the cellars for the erection of the buildings thereon.

(Answer objected to, as not responsive, and question repeated.)

I consider the answer responsive, but add, as desired, that it passed

into possession of the District in pursuance of the agreement referred to.

231 Q. There was nothing else that increased the ability of the company to make this reduction within the time specified, was there?

A. I will not undertake to say that there was not; it is possible that more of the stalls came to have occupants, and as the market grew more full its revenues increased.

Q. I did not ask for possibilities, but for facts; do you know of anything else within the period specified that increased the ability of the company to make this reduction?

A. When asked to make a negative answer excluding all possibilities I think I have a right to except any possibility; it is my impression that more and more of the empty stalls were coming into occupancy during this period, but I will not state positively.

Q. Have you any recollection of any stalls coming into occupancy within this period?

A. Such is my impression, but I have no positive recollection.

Q. Who have you consulted with as to this arrangement with the governor and board of public works for discount or reduction of the rent since the last adjournment?

A. First, I have consulted with no one with reference to the conversations with the board of public works relative to the intention of the company to make discounts for the payment of rentals, that I remember; second, I examined the books with reference to the discounts actually made, at the market office, with M'r P. S. Smith, clerk, and I think I afterwards talked with M'r Ordway on the subject.

Q. Did you talk with M'r Ordway as to your testimony in regard to the conversation with M'r Shepherd on the subject of the discount or reduction on account of the rents?

A. I do not recollect that I did; I intend to consult with him and General Birney freely on all these questions, and may, possibly, have mentioned this subject, but am confident that I have not.

Q. In your negotiations with Governor Shepherd, who first introduced the subject of a discount or reduction of rent?

A. I do not remember.

Q. Was not the representation that the rent would be reduced or a discount allowed made on the ground that if the city took the north front of the property the company would be better off and able to grant the discount?

A. That idea may have been alluded to as a reason why the company intended to adopt the system of making discounts for prompt pay-

232 ment in advance, but it was not advanced as a representation which formed any inducement to, or part of, the written contract, or any oral agreement or contract.

(Objected to as not responsive to the question.)

Q. Was not that idea also alluded to as an inducement to the making of either the oral or the written contract?

A. Not according to the best of my recollection and belief.

Q. Can you say that it was not alluded to in that connection or that manner by either you or M'r Shepherd?

A. I am entirely confident that it was not alluded to in any such view so far as my mind was concerned; what view M'r Shepherd took of it I cannot say, but no word of mine operated intentionally on my part to induce in him any such view.

Q. How did the agreement and transfer to the District of the north

front of the property operate to benefit the company, or increase its ability to reduce the rents or grant a discount of the rents?

A. It is not certain that it did operate to benefit the company, but as the rental of the whole ground reserved to be paid to the District under their charter was thereupon proportioned between the company and the District, the immediate effect was to reduce the annual charge upon the company, presumptively enabling it to make such discount if other causes did not .

Q. As counsel of the company did you not, at or about the time of that agreement and transfer, advise the company that the effect of the agreement and transfer of the property, in connection with the act of Congress allowing it, would be to save the company from the necessity of erecting a building on the property stipulated to be conveyed to the District, which, by its charter, the company had been required to do?

A. Not in that form; I undoubtedly advised the company that the agreement made in pursuance of the act of Congress deprived the company of the privilege of making any use of the property so to be conveyed, and that it was a legal and binding contract according to its terms.

Q. If you have the stock-books I called for the other day, will you please produce them?

A. I have them, and here produce them.

Q. State when Governor Cooke ceased to be a stockholder in the defendant company, and to whom he transferred his stock, and when.

A. He transferred the 1,000 shares which had been held by him to Hallet Kilbourn, on the 9th day of January, 1872.

233 Q. State whether Governor Shepherd was a stockholder in the defendent company.

A. He was an original stockholder in 1870 for 1,500 shares; he acquired in 1871 75 shares; he sold and transferred December 22, 1870, to different parties, 975 shares; February 18, 1871, 400 shares; December 30, 1871, 75 shares; January 17, 1872, 85 shares; February 12, 1872, 30 shares; which transfers appear to have left him 10 remaining shares, which ten appear by the book to have been transferred to Moses Kelly, February 3, 1873, leaving him no longer a stockholder.

Adjourned until Thursday, the 29th April, at 1 o'clock p. m., to meet at the same place.

T. A. LAMBERT,
Examiner.

THURSDAY, *April* 29.

Met pursuant to adjournment. Present, R. T. Merrick, esq., counsel for complainant; W. Birney and W'm E. Chandler, esqs., counsel for defendant; whereupon said W'm E. Chandler further deposed as follows:

Since my prior examination I have ascertained, by reference to memoranda, that I was stockholder, director, and treasurer of the first organization, in the summer of 1870. I attended the subscription, as before stated, at the request of M'r Carlos Pierce; being present, I subscribed first for one share, on which I paid five dollars; then twenty shares, on which I paid one hundred dollars; subsequently I arranged to become a larger owner of stock. I find that the subscription for stock in the first organization was at the Interior Department, May 30 and 31, 1870, and the meeting of the stock subscribers, to organize, June 11, 1870.

The subscription at the Interior Department of the second organiza-

tion was October 24 and 25, 1870, and the meeting of stock subscribers for organization was November 5, 1870.

By M'r Merrick:

On the day of the decision of the motion for injunction in this case, and after such decision was rendered, did you consent that the dealers who had left their stands in the market-house in consequence of the purpose of the company to resell, might return to such stands?

(Objected to by General Birney as irrelevant and as new matter on cross-examination, on which the statement of the witness must bind the party calling it out.)

234 A. I did not consent in any form which left the market company in any other legal position than if they had not returned; I had a conversation with M'r Merrick which I can state the substance of, as I recollect it, either with or without my construction of the effect thereof.

Q. Do you know whether the dealers who had left their stands did, in fact, return to their stands immediately after the decision?

A. I have been informed and have no doubt that most of them did so, but they had no rights there, and the company did not consent to their return in any other way than by not offering any obstacle thereto, and upon the distinct notice to them from the company that none of its legal rights should be affected by its forbearance, but that it should have the same legal rights against them as if they had not returned; this condition was assented to by them.

Q. To which of them was such notice given?

A. To all whom M'r Merrick represented as counsel.

Q. Do you mean by "their rights," the rights which they had before leaving, or would have had without leaving?

A. If the question refers to rights of the market-men, I mean that they having voluntarily left the market and their two years' term having expired, had no rights whatever against the company.

Q. If they had no rights whatever why were they permitted to go back?

A. Their counsel claimed that they had rights, and under the circumstances the company did not see fit to exercise its extreme rights against them, and to forcibly prevent their return, which, as I have stated, it only tolerated on the distinct understanding that none of the company's rights, whatever they might be, should be affected by its forbearance.

Q. Was it not distinctly understood that the rights of the company, which were not to be affected by their return, were only those rights which it claimed as accruing to it by reason of the expiration of the time for which, as claimed by the company, these parties had purchased the right to occupy their stands?

(Objected to by General Birney, unless any agreement testified to as made between counsel was in writing.)

A. There was no exception whatever to the rights of the company, which, it was understood, were not to be affected; none of its rights, as then existing, July 9, 1874, were to be in any way affected or considered as waived.

235 Q. It was desirable to the company to resell the stalls at the expiration of the two years, for which it was claimed the right to occupy them had been sold, was it not?

A. It is difficult to say what was desirable or undesirable; the company had proposed to resell them, and stopped only in consequence of the injunction in this case.

Q. Did the injunction in this case apply to all the stands?

A. It did not, except to all of Hoffman's.

Q. Were not the stands of those who had left the market-house, referred to in the foregoing interrogatories, advertised for sale?

A. All the stalls in the market had been advertised for sale.

M'r CHANDLER, being recalled, was further cross-examined, as follows by M'r Merrick:

Q. Look at the paper now handed you and state whether it is a printed copy of a notice prepared by you as counsel for the Market Company, and which notice was served or directed to be served upon the dealers.

A. It is a copy of a notice which I prepared in June, 1874, to be served upon the dealers, and it was served generally on the dealers.

(Said printed copy is herewith returned, marked Exhibit Z.)

W'M E. CHANDLER.

EXHIBIT Z.

OFFICE WASHINGTON MARKET COMPANY, *July* 1, 1874.

To :

Your right to occupy stand or stall No. , for two years from July 1, 1872, having this day expired, you are hereby again notified to quit and deliver up the same to the company on this day, according to the market regulations.

Any dealer remaining in occupancy of his stall or stand after this date will be a trespasser upon the property of the company; will be liable for all damages arising therefrom, and to suit for such damages, also to summary ejectment and prosecution under the regulations, at any time, at the will of the company, without further notice.

Any delay or forbearance on the part of the company to enforce their full rights against any occupant cannot be deemed as a waiver of their rights, but the trespasser may expect to see them enforced at any time and in any manner.

P. S. SMITH, *Clerk.*

236 NEWTON P. REID.

Newton P. Reid, a witness produced on behalf of the defendant, being duly sworn, did depose, say, and testify as follows:

Q. State your business and residence.

A. My business is a huckster in the Centre Market; my residence is in Washington, D. C.

Q. How long have you been a huckster in the Centre Market?

A. Between ten and eleven years.

Q. Are you a stall-holder in that market?

A. Yes, sir; three stalls I hold there.

Q. Did you buy the right to occupy the stalls at the auction sales of May and June, 1872?

A. Yes, sir.

(Objected to as irrelevant.)

Q. Before those auction sales took place, did you or not have any conversation with any officer of the Market Company about the terms of the proposed sales; if so, with whom and what was the conversation?

(Objected to as incompetent.)

A. I recollect of having a conversation with M'r Ordway; my fears were that I would be excluded from the market; that is what I spoke

to him about; the stalls would sell so high, and I was afraid I would not be able to purchase a stall at the price they would sell at. He thought he would sell them in such a way to give us poor people a chance to purchase. I think that is about the conversation we had previous to the sale.

(Answer objected to.)

Q. Was it to the interest of the poor class of dealers that the sale should be made for a long or short time?

(Objected to as leading and incompetent.)

A. I think it was, on this ground: if they had been sold for a long time they would have brought so much that we could not have entered; that is what I thought.

Q. Was this opinion expressed by you at that time to M'r Ordway?

A. Yes, sir.

(Objected to.)

Q. Were you at that time acquainted with the opinion of the poorer class of dealers on this point, particularly the hucksters?

(The witness' acquaintance with others' opinions is objected to.)

A. So far as my conversation went; the few that I conversed with on the subject.

237 Q. What was the opinion so far as you heard it?

(The same objection as above is here taken.)

A. They were in favor of the stalls being sold for a short time.

Q. For what term did you buy in 1872?

A. A two-year term.

Q. How long did you hold under that purchase?

A. Two years.

Q. Did you buy at the public auction sales like the others?

A. Yes, sir.

Q. Did you buy again about the first of July, 1874, the right to occupy?

A. Yes, sir.

(All questions as to what the witness did in respect to the purchase of stalls objected to as incompetent and immaterial.)

Q. Were there any other dealers who gave up their stalls at the end of the two years and bid again at the sales last June or July?

A. Yes, sir; there were a good many.

Q. Were you present about or a little after the first of July last at the market office when a large number of dealers requested their stalls should be put up again and resold? State fully what took place.

A. Yes, sir, I was present. The stands were put up and resold at the request of the dealers; I could not say what number requested their stands to be resold, but there were a great many.

The deposition of this witness was here closed, subject to cross-examination.

Adjourned until Friday, April 30, 1875, at 10 o'clock a. m., to meet at the same place.

T. A. LAMBERT, *Examiner.*

FRIDAY, *April* 30, 1875.

Met pursuant to adjournment. Present, R. T. Merrick and R. K. Elliot, counsel for the complainant; W'm E. Chandler, esq., counsel for defendant; and the witness, NEWTON P. REID, whereupon the latter was cross-examined by M'r Elliot as follows:

Q. Do you know how many colored men occupy stalls in the Centre Market besides yourself?

A. No, sir, I do not; couldn't say; they were in and out.

Q. Are you intimately acquainted with M'r Ordway?

A. Well, I am intimately acquainted with him as an officer of the market.

238 Q. How long have you been intimately acquainted with him?

A. In 1872 I became acquainted with him, if my memory serves me right.

Q. When did you first talk with him about this case?

A. Just before the stands were sold.

Q. When did you first talk with him about this suit?

A. Well, I declare, I don't know that I could tell the exact day; I think it was week before last, but I cannot state the day.

Q. Where were you when M'r Ordway called to talk about this suit?

A. Down at the Centre Market.

Q. What did he say to you?

A. He asked me there did I understand the term of sale—the first sale in 1872; I told him I did; he asked me did I understand the term of sale and how long I was to occupy—was I fully satisfied that the term expired in two years; I said that I was; that that was the term as stated by himself; he then asked me did I think at that time it was the interest of the poor dealers that they should be sold on a short term; I told him that I thought it was to the interest of the poor dealers that it should be sold on a short term.

Q. The next time that you saw M'r Ordway, what did he say about this suit?

A. I don't recollect of any further conversation; I omitted in my preceding answer to state M'r Ordway asked me if I would be willing to make a statement of what I had said to him; I told him that I would be willing to testify to the truth at any place and at any time.

Q. Are those all the conversations you had with M'r Ordway about this suit?

A. They are all that I recollect.

Q. Can you read and write?

A. Well, a little, sir; I am very limited in learning.

Q. Can you read understandingly?

A. Print, I can; I can't writing.

Q. At the time you purchased your stall, in 1872, had you any knowledge of the term for which you purchased other than what you derived from M'r Ordway's statements?

A. M'r Ordway was the auctioneer, and, of course he explained the whole matter—the two-year term that the stall was sold for.

Q. Had you any other information on this subject?

A. None at all.

Q. Then you purchased on M'r Ordway's statement, did you not?

A. I did.

239 Q. When did you have the first conversation with M'r Ordway when you expressed your fears that the stalls would sell so high that you might be excluded, as testified in your direct examination?

A. Some short time before the stands were sold.

Q. As near as you can state, what time?

A. If my memory serves me right it was some time in the month of June; it was some time about the completion of the market; I know the date when the market was completed; I could tell, for that was the time I was most interested in the matter.

Q. Give the names of the dealers in the market whom you know of your own knowledge were in favor of selling the stalls for two years.

A. I could not give the names of all that I conversed with.

Q. Give all the names that you now recollect.

A. There was William Newton, was one; M'r Carroll—I had some conversation with him; I don't recollect his first name. I think that's about all that I remember; it's been so long I don't recollect about others; I remember fully that I had conversations with them.

Q. What bonus did you pay in 1872?

A. $106 on each stand.

Q. Did you buy again at auction in 1874?

A. Yes, sir.

Q. Had you paid your rent regularly?

A. I had.

Q. Have you the receipts?

A. I think I have them all.

Q. Will you please produce the receipts from July 1, 1874, to date?

A. I could not now; I can at some other time; I will produce them.

Q. Why did you repurchase your stall in 1874?

(Objected to by M'r Chandler.)

A. I thought that was the only way to continue my business; that was the end of the term I had bought it for.

Q. Was your stall resold at your own request?

A. It was.

Q. On what date?

A. I don't remember exactly the day; it was in the month of July, 1874.

(Upon suggestion of M'r Chandler and M'r Ordway, and after reflection, the witness thereupon added:)

I am prepared now to correct what I have just said, and to say it was in June; I know by the 4th of July, at which time we were there.

Q. Were any other stalls in the market resold in June or July, 1874?

A. There were a great many sold in June, at the time I bought.

Q. At whose request were they sold?

240 (Objected to by M'r Chandler, as calling for a fact not appearing to be within the knowledge of the witness.)

A. At the request of the dealers.

Redirect, by M'r Chandler:

Q. How many colored men occupy stands in the market, as well as you can recollect?

A. I could not say.

Q. Will you ascertain and state hereafter?

A. I don't know that I could well.

Q. Cannot you ascertain about the number of colored men now doing business in the market?

A. I could come near the number hereafter, but cannot at this time.

Q. Do you remember that there were other dealers who favored a sale for a short rather than a long time, besides those whom you have named, but whose names you do not now recall to mind?

A. I do not remember of any objection to the short term among those who I conversed with, and so I do not remember the names.

(Answer objected to by M'r Elliot as not responsive.)

Q. Were there or not dealers who preferred a short term whose names you do not recollect?

(Objected to by M'r Elliot as leading.)

A. There was.

Q. Referring to your first statement to M'r Birney, that you preferred a sale for a short term, and assuming that the sale commenced the 31st of May, 1872, state whether or not the statement was made before that day.

A. Yes, sir; it was made before that day.

Q. How long before, as near as you can recollect?

A. A few days previous to the sale; I could not say exactly.

Q. State whether or not you can read and write sufficiently for the transaction of your ordinary business.

A. I cannot write sufficient for the business; I can read very well.

N. P. REID.

Sworn to and subscribed before me this 30th day of April, A. D. 1875.

T. A. LAMBERT, *Examiner.*

The witness J. T. Varnell reappears to make answer to a question propounded when last under cross examination, as follows:

241 Q. Please look at the stock and give the amount that you have paid on each share by reason of assessments.

A. I paid five dollars a share on one hundred shares.

Q. From whom did you buy the one hundred shares?

A. M'r Kelly.

Q. Those are the shares that you bought directly from the company?

A. Yes, sir.

Q. When did you buy them?

A. I got them in three different instalments.

Q. About when?

A. I think it was 1870 and 1871.

Q. Before the completion of the market building?

A. It was before the completion of the market building.

Redirect:

Q. When you state that you got the stock from M'r Kelly, do you know whether it came directly from the company, or was M'r Kelly's own stock?

A. I think the first was from the company.

Q. On cross-examination you made a statement in reference to what you said before the Senate committee. Do you desire to make an explanation on that subject? If so, please do so.

A. I do.

(The witness thereupon produced a paper writing, and read the contents thereof, as follows:)

(The counsel for the complainant objects to the introduction of the testimony in this form.)

"When I said I did not testify before Senator Morrill's committee, I thought I was not sworn, and I do not now remember that I was, although I may have been. While the substance of what is reported of what I said may have been substantially correct, I am sure that it is not a full and correct report of what I stated before the committee. Shortly before I went before Morrill's committee I had been unduly pressed by the company on a note I had endorsed, consequently had been a ready listener to statements made by others (marketmen) in regard to large revenues which the Market-house Company derives from rentals; I became convinced at last, by hearing before Congress upon a bill to reopen the sale of stalls, that it was better to have the sale reopened and have

them sold forever, which would enable the Market Company to pay a large portion of its indebtedness, and thereby enable them to make a corresponding reduction in the rent of the stalls, and the best of
242 the stalls in the market should pay a bonus; I know of no other way to enable them to reduce the rents than to sell them at auction."

The examination of John T. Varnell was here suspended, subject to cross-examination by the counsel for complainant.

Thereupon adjourned until Monday, May 3, 1875, to meet at the same place, at the hour of 1 o'clock p. m.

T. A. LAMBERT, *Examiner.*

MAY 3, 1875—1 p. m.

Met pursuant to adjournment, whereupon the taking of testimony was further adjourned to meet at the same place, May 4, at 11 a. m.

T. A. LAMBERT, *Examiner.*

MAY 4—11 a. m.

Met pursuant to adjournment. Present, R. K. Elliot, esq., of counsel for complainant; W'm E. Chandler, esq., of counsel for the defendant; and the witness, Edward B. Lafferty, who reappeared, and his redirect examination was commenced, as follows:

EDWARD B. LAFFERTY:

Q. In that portion of your cross-examination where both interrogatories and answers were not taken down, but only the substance of the answer, you appear to have stated that before the auction sales were made, in 1872, you recollect no conversation with any of the officers of the company as to the length of time for which the sales of stalls were to be made; is that or not an accurate statement?

A. It is not. I did hear M'r Ordway, and M'r Emery also, state that the stalls would be sold for two years.

Q. Do you or not remember that the advertisements, posted ten days before sale, said, "for particulars of sale inquire at the market office"?

(Objected to as incompetent.)

A. I do not recollect the exact wording of posters of the first sale; I do recollect of putting up boards for the purpose of posters at each door of the new buildings and surroundings of the market; I superintended the putting up of posters.

Q. State whether or not, for any time prior to the sale, dealers in the old market were informed by you, or by any officer of the company
243 to your knowledge, in answer to their inquiries, that the approaching sale would be for two years?

(Objected to unless connected in some way with the plaintiff.)

A. They were, by me, and I heard them frequently make inquiries of M'r Emery and M'r Ordway.

Q. Your testimony as to what paper was read from at the opening of the sales is indistinct as to whether it was a charter of the company, or what paper it was; explain on that point if you can.

(The form of the question objected to.)

A. Upon second thought, I know that the paper referred to could not have been the charter of the company.

Recross-examination:

Q. Are you still in the employ of the Market Company?

A. Yes, sir.

Q. Do you recollect when you were under cross-examination that M'r Chandler desired that you should correct your answer to one of my questions so that it should read that you did recollect hearing some officer or officers of the company, prior to the sale, state the term for which the sale would be made?

A. I recollect M'r Chandler's saying that he thought I did not understand one of the questions, and at or about that time I was requested to leave the room.

Q. By whom was the request made?

A. By M'r Elliot.

Q. Do you mean by your last answer on your redirect examination to be understood as stating that the charter was not read on the day of sale by M'r Ordway or any other officer of the company?

A. In my last answer I had reference to the by-laws and terms of sale, as I know they are not in the charter.

Q. And those are all that you recollect hearing read at that time?

A. Those are all.

By M'r Chandler:

Q. Since you left the room, as above stated, in consequence of a controversy arising over a point in your testimony, have you had any conversation with M'r Chandler or any other representative of the company as to what your testimony would be on that point?

A. I have not, sir.

E. B. LAFFERTY.

244 Adjourned until this evening, May 4, 1875, at 7 o'clock p. m., to meet at the same place.

T. A. LAMBERT,
Examiner.

TUESDAY, *May* 4, 1875.

Met pursuant to adjournment. Present, R. K. Elliot, of counsel for complainant, and W'm E. Chandler, esq., of counsel for defendant; whereupon, no witness being present, the taking of testimony was adjourned until Saturday, the 8th day of May, to meet at the same place, at the hour of 1 o'clock p. m.

T. A. LAMBERT,
Examiner.

HOFFMAN
vs.
THE MARKET COMPANY. } No. 3797. Equity.

Ordered by the court this 16th day of December, 1875, that the defendant in the above entitled cause be allowed fifteen days from this date to take further testimony in the principal suit, and that said plaintiffs be allowed five days, after the expiration of said fifteen days, to take further testimony in reply therein in this behalf.

By the court.

A. W.

SATURDAY, *Dec.* 18*th*, 1875.

Met pursuant to the annexed order of this court, dated Dec. 16th, 1875, and allowing the defendant fifteen days from the date thereof, &c. Present, R. K. Elliot, esq., of counsel for complainants, and W. E.

Chandler, esq., of counsel for defendants; but no witnesses being in attendance, the taking of testimony was adjourned until Monday, Dec. 20th, 1875, to meet at the same place (rooms 2 and 4, Columbian College Law Building), at the hour of 1 p. m.

T. A. LAMBERT,
Examiner in Chancery.

MONDAY, *Dec. 20th*, 1875.—1 o'clock p. m.

Neither counsel nor witnesses being in attendance, the taking of testimony was adjourned until Tuesday, Dec. 21st, 1875, at the same place and hour.

T. A. LAMBERT,
Examiner in Chancery.

TUESDAY, *Dec. 21st*, 1875.—1 o'clock p. m.

Met pursuant to adjournment, W. E. Chandler, esq., of counsel for defendants, and Preston S. Smith, a witness on behalf of the defendants, recalled for examination, being in attendance, who did thereupon testify, depose, and say as follows:

245 PRESTON S. SMITH.

Int. 1. State whether or not you know the numbers of stalls occupied by the various plaintiffs in the amended bill, the amounts of rent due from any of them prior to July 1, 1874, and the amounts which would be due from them for use and occupation between July 1, 1874, and June 30, 1875, reckoned at the same rate as the rent previous to July 1, 1874; if so, state the amount so due.

A. I do know the stalls and the amounts due, and they are as stated in Exhibit 1, defendant's answer to amended bill, with the following exceptions and corrections:

Corrections to Exhibit 1, in defendant's answer to amended bill here inserted, and marked Exhibit P. S. S., Z.

EXHIBIT P. S. S., Z.

Corrections in Exhibit one to defendant's answer to amended bill.

Names of complainants.	Corrections.
Anderson, W'm S	$15 75 paid June 14, 1875.
Bakersmith, Henry	6 00 of this am't due for rent of ice-box.
Brown, Sen'r, W'm	40 50 more is due on No. 14.
Beach, H. L	15 75 paid June 5, 1875.
Beck, Jacob	7 87 " " 15, "
Cheek, James H	12 00 due more than named in defendant's answer.
Coleman, George W	15 00 paid June 14, 1875.
Coleman & Son, D. E	15 75 " " 8, "
Carll, George	42 00 more due prior to July 1, 1874.
Davidson, J. H	6 00 more due on ice-box.
Dondero, B	84 00 less due than stated.
Donaldson, B. S	18 00 paid June 8, 1875.
Emerson, Orlando	19 25 more due on ice-box.
Eichorn, Rudolph	100 00 less than stated.

Fitzpatrick, James	6	75	paid June 15, 1875.
Fry, James H	6	75	" " " "
Faunce, C	2	00	less than stated.
Gheen, Eno. W	5	83	more due for ice-box.
Golly, Ben	10	00	paid June 12 and 20, '75.
Homiller, M. H	2	00	less than stated.
Hunt, B. F	20	00	more due than stated.
Hoover, S. S	5	83	of the amount stated is for ice-box.
" " "	10	00	more due for bonus on ice-box.
Holmead, William	2	50	more due than stated.
Holstein, A. H. F	36	00	more due than stated.
Hall, G. I	15	75	paid June 8, 1875.
Hough, W. W	6	75	paid June 15, "
Hahn, M'r's J	25	00	of amount is for bonus on stall.
246 Hughes, Rebecca	$5	25	paid June 15, 1875.
Hess, Valentine	5	25	" " 29, "
Jenkins, T. T	15	75	" " 8, "
Kengla, Jos. F., owes	294	00	for rent prior to July 1, 1874.
King, R. F	15	75	paid 21 of June.
Kaiser, John	15	00	" 22 " "
Kuhlman, Cha's F	10	50	" 10 " "
Kraft, Geo. S	50	40	" 10 " "
Kengla, W'm T	2	00	is for use of ice box.
Kahlert, F. W	13	50	paid June 8.
Kahlert, G	14	00	" " 15.
Kelly, John R	64	00	of the am't named, due prior to July 1, 1874, is for ice-box.
" " ", should be	2	00	less than stated as due since July 1, 1874; also $12 of the am't stated is for use of ice-box.
Kaiser, Justus	14	00	paid June 8th, 1875.
Linkins, W'm	12	00	more due for ice-box.
Levy, Leopold F	10	50	paid June 29, 1875.
Matthews, Henry	5	25	more due than stated.
Menke, M	20	25	paid June 8th, 1875.
Ruppert, Gustavus	15	00	" " 12th, "
Roover, John	10	50	" " 18th, "
Smith, Robert, should be	1	00	less than stated.
" "	7	25	paid Ap'l 24, on ice-box.
Schneider & Bro	1	00	of am't named is for ice-box.
Sherwood, Perry	7	00	paid June 8th, 1875.
Sacks, E. J	20	25	" " 17th, "
Schroth, Charles	27	00	" " 17th, "
Schaefer, Charles	15	00	" " 5th, "
Seitz & Sons, Geo., should be	1	00	less than stated.
Tucker, R. A	7	00	paid June 15th, 1875.
Thompson, R. L	21	00	" " 8th, "
Voght, John F	14	00	" " 12th, "

Voneiff, George	15 00	paid June 8th, 1875.
" " , owes	9 00	more than stated for rent prior to July 1, 1874.
Whallon, Henry T	21 00	paid June 8th, 1875.
Whitmore, J. R	10 50	" " 19, "
Wheatley, A. J., should be	40 50	more than stated.
Wetzel, J. W., " "	27 00	" " "
Weider, W. (should be Heider, W.)	5 25	paid June 12th, 1875.
Warthen & Bro., R. C., sh'd be	81 67	more than stated.

Beck, Jacob's, stand should be 207 and ½ of 206.
Daly, John M., " " " No. 48 and ½ of 47.
Eichorn, Rudolph, does not occupy stand No. 153.
Faunce & Son., J. D., stands should be No. 238, 239, and 240.
King, R. F., has surrendered stands No. 274, 275, and 276.
Wooster & Adams, stands No. 44, 46, should be No. 449.

The examination of the witness was here suspended, at the re-
247 quest of counsel for defendant, and the taking of testimony was adjourned until Wednesday, Dec. 22d, at 1 o'clock p. m.

T. A. LAMBERT,
Examiner in Chancery.

WEDNESDAY, *Dec.* 22, 1875—1 o'clock p. m.

Met pursuant to adjournment. R. K. Elliot, esq., of counsel for complainants; W. E. Chandler, esq., of counsel for defendants; and the witnesses, Thomas C. Connolly and Preston S. Smith, being in attendance, whereupon the former, being duly sworn, did thereupon depose, testify, and say as follows:

THOMAS C. CONNOLLY.

Int. 1. State what has been and is your connection with the Washington Market Company.

A. A stockholder and director, from the beginning.

Int. 2. State whether or not you were present at a meeting between the representatives of the market-dealers and of the market company, in Washington, on December 20th, 1870, reported in the Patriot and Republican Dec. 21st; if so, state, if you know, the object of such meeting.

A. I am very sure I was. I missed no meeting. All our conferences at that time related to building the sheds—the temporary sheds.

In. 3. What events, if any, had happened to render such meeting advisable or necessary?

A. The destruction of the old market-house by fire, and a resolution by Congress requiring the company to erect such sheds.

Int. 4. State whether or not you remember a statement at that meeting by M'r A. R. Shepherd, or any one, that it was the intention of the company to give parties who took stalls in the permanent building vested rights therein, which would belong to them for all time to come, or which they could hand down to their children, or that in substance.

(Objected to by M'r Elliot as leading.)

A. I did not hear such remark. I should have taken exception to it.

Int. 5. Do you or not remember any statement by M'r Shepherd, or any one else, as to the policy which the company intended to pursue in selling the stalls in the permanent market buildings, when they should be erected?

248 A. So far as I had any understanding of that matter, it was the unanimous purpose of the company to sell the stalls for a limited time. I don't remember any by M'r Shepherd individually, but the idea expressed was expressed by all the members of the company.

Int. 6. Confining yourself to what took place at this meeting of Dec. 20th, do you or not remember any discussion as to what the company would do with reference to the stalls in the permanent market buildings?

A. It is difficult for me to separate that meeting from other interviews so clearly as to be sure that convictions on my mind really arose at that meeting. I can better group the several interviews from the 20th to the end of December, 1870.

Int. 7. State whether or not at that meeting, or at any other time, M'r Shepherd, or any representative of said company, was authorized to inform any of the market-dealers that purchasers at the sale of stalls under the charter would obtain a right to occupy in perpetuity the stalls or stands so purchased.

(Objected to by M'r Elliot, for the reason that it does not state the authority referred to, and because it is leading.

Counsel for defendants says that authority of the company is meant.)

A. No; neither formally nor informally.

Int. 8. Did you, or any other director or officer of said company, give such authority to any person?

A. I never did, and have no knowledge that any other member or officer did.

Int. 9. State when, if at all, you first heard the alleged remark of M'r Shepherd, assigned by the dealers, or any of them, as a reason for their claim of a perpetual right to their stalls.

(Objected to because it is leading, vague, and indefinite, and does not specifically refer to any of the parties to the record.)

A. I can't say that I ever heard it before I read it in the brief to-day.

Cross-examined by M'r Elliot:

Int. 1. When was the defendant company organized?

A. I believe it was in the autumn of '70. I have no memorandum.

249 Int. 2. At the time of the organization of this company, were there any market buildings upon the land embraced within its charter?

A. Yes.

Int. 3. How soon after the organization of the company were the directors elected, and when did they hold their first meeting?

A. I can't give dates. I have had no occasion to refer to memoranda on that subject of late.

Int. 4. Were you present at the first meeting of the board of directors?

A. I am very sure I was present at the first. As I said before, I missed no meeting. I think that when the company was organized, a meeting of the directors immediately followed.

Int. 5. What arrangements, if any, were made by the directors of the company, looking to the purchase of the private property of parties occupying stalls or stands or buildings upon the land granted to the company by the charter?

A. I do not remember, but believe this subject was included in the duties of the building committee, of which I was not a member.

Int. 6. Was there any authority conferred by the directors, of which you were one, upon the committee to make such arrangements?

A. The resolution creating the building committee is of record. If this power was not therein conferred, I am sure it would have been acquiesced in by the board and by the company.

Int. 7. Who composed the committee?

A. I do not recollect fully.

Int. 8. How soon after the organization of the company was it voted to erect the market buildings?

A. It appears to me that it was at once resolved to erect market buildings upon the ground then possessed by the company.

Int. 9. That was in the fall of 1870, was it?

A. That is my recollection.

Int. 10. Is there a journal in existence containing a record of the proceedings of the board of directors of the defendant company at all their meetings, from its organization down to date?

250 A. I saw such a journal in the beginning. I have never had occasion to refer to it since, but have no doubt it has been kept up to the present time.

Int. 11. Will you produce that journal containing the record to which I have referred, from the first meeting of the board of directors down to the 1st of July, 1872?

A. I think an individual member ought not to so promise. I have no doubt the president or secretary of our board will produce it. It should be in the custody of the clerk, B. D. Whitney.

Int. 12. What amount of money was paid by the company to dealers in possession of stalls, stands, or buildings in the old market for their private property when the defendant entered into possession of the ground upon which that market building was situated?

A. I don't know.

Int. 13. Was there anything paid, or agreed to be paid, by the company?

A. If I ever knew, I don't now remember.

Int. 14. What was done by the company between the date of its organization and the date of the destruction of the old market buildings toward the erection of new buildings?

A. I don't remember; the season was very cold, and it appears to me there was very little done.

Int. 15. Was there anything done?

A. I don't remember; I regarded it as solely the business of the building committee.

Int. 16. When did the defendant company take possession of the land embraced within its charter?

A. I can't answer that question.

Int. 17. Does the journal show?

A. I don't know.

Int. 18. Did the company receive the rent for the stalls between the date of its organization and the date of the destruction of the old buildings?

A. I never knew, but had the impression they did not.

Int. 19. Do their records show the fact?

A. I don't know. It is now recalled to my mind that we commenced to receive revenues about the 1st of January, 1871.

Int. 20. Was not the resolution authorizing the Market Company to erect the temporary sheds after the destruction of the old buildings in-

troduced in Congress at the instance of the directors of the company?

251 A. I don't know. I didn't know of the destruction of the market house until Monday, when I went up to the Capitol, intending to confer with friends on that very subject; and understanding that the subject would be brought up, I left before any action had been taken, and never knew who had originated the resolution of Congress.

Int. 21. How many shares of stock in this company do you own at present?

A. Two hundred and three.

Int. 22. How much have you paid on account of these 203 shares?

A. Five dollars a share.

Int. 23. You have stated in your direct testimony that on the 20th of December, 1870, and prior thereto, you had an idea or an understanding that the stalls in the market buildings of the defendant company were to be sold for a limited time; when and where, and from what act, expression of, or understanding with the directors of that company did you obtain that idea or acquire that understanding?

A. It was then the universal opinion and purpose of the company, and by all considered the meaning and intention of the charter.

Int. 24. Was there, between the date of the organization of the company and the 20th of December, 1870, any act, resolution, or vote of the directors establishing such a course of procedure in respect to the sale of stalls?

A. I can't locate such at this time.

Int. 25. Is your direct testimony upon that point anything more than an impression?

A. It is more than an impression. I am speaking from memory, and speak from the best of my knowledge and remembrance.

The cross-examination was here suspended at request of counsel, and the taking of testimony was thereupon adjourned until December 23, 1875, at 10 o'clock a. m.

THURSDAY, *December* 23, 1875—10 o'clock a. m.

Met pursuant to adjournment; R. K. Elliot, esq., of counsel for complainants, W. E. Chandler, esq., of counsel for the defendant, and the witness, Thomas C. Connolly, being in attendance; whereupon the cross-examination of the latter was proceeded with, as follows:

252 Int. 26. State when it was determined by the board of directors to sell the right to occupy the stalls for a limited time.

A. I can't fix the time.

Int. 27. Was it so determined by the board of directors?

A. I don't remember any formal vote on the subject.

Int. 28. By what authority was it so determined?

A. Regarding it as the only purposed plan, and as clearly prescribed in the charter, I never looked for, and do not remember, any explicit vote.

Int. 29. Who were the legal advisers of the company at and before the time when it was agreed that the stalls should be sold for a limited period?

A. I always looked upon M'r William E. Chandler as an adequate legal guide, and believe that I knew of my own knowledge no legal adviser beyond him at that precise time.

Int. 30. At what time; 1870, 1871, or 1872?

A. I can fix events better than dates, and would say between the de-

struction of the old building by fire and the sale of the stalls, and must refer to the records for the dates.

NOTE BY COUNSEL FOR COMPLAINANT.—The witness is here requested, in the presence of the examiner, to produce the record to which he refers and show the precise date.

Int. 31. Do you remember your direct testimony yesterday relative to what is alleged to have been said by M'r Shepherd at the meeting to which your attention has been called?

A. I do.

Int. 32. Do you remember the date of that meeting?

A. December 20, '70.

Int. 33. Do you remember that there was an understanding between the directors of the market company prior to that date that the stalls should be sold for a limited time?

A. I believe that I had all their ideas on the subject, and I never knew anything in conflict with this understanding. Reflection since yesterday has led me to the belief that there was but one formal meeting between the directors and dealers at that time, viz, in December, after the 20th day, and I can hence say emphatically that I do not believe that M'r Shepherd then and there enunciated the expression ascribed to him.

Int. 34. Then, prior to the 20th of December, 1870, there existed, according to the best of your recollection and belief, an unanimous
253 understanding among the directors of the company that the right to occupy the stalls in the market-buildings should be sold for a limited time?

A. This question helps my memory. I now remember that in the directors' meeting, before that time we calculated our expected revenues accruing from a first sale for two years, and then a sale for a more extended time.

Int. 35. What was the conclusion resulting from those calculations, and what act resulted from that conclusion?

A. The conclusion upon the minds of the directors was that they would be helped at the beginning in obtaining means to pay expenses of construction and keeping, and the result of that conclusion was that they depended upon such help at both times.

Int. 36. As the result of the calculations to which you have referred, did the board of directors then determine or reach a tacit understanding that the right to occupy the stalls should be sold once in every two years, or for any other limited period?

A. I can only answer to the tacit understanding, and that is that it was the intention to sell for two years, and, at the expiration of the two years, for a period not then defined. This is my conviction.

Int. 37. Are you at this time enabled to state positively that M'r Shepherd did not, at the meeting to which your attention has been called, make the representations attributed to him in the testimony in this cause and in the newspaper reports of about that time which are made a part of this record?

A. I cannot say he did not. I can say I did not hear it; it was incompatible with all our views, and I believe firmly that I should have combated it.

Int. 38. At the time of the meeting of the board of directors, when the tacit understanding to sell the right to occupy the stalls for a limited period was reached, as you have testified, had the directors a copy
rter before them, and were they, to your knowledge, acquainted
egislative history of that charter, or did they, or either of them,

in your presence, discuss that history, or the limitations of the charter respecting the sale of stalls?

A. Nothing formal of this character is within my remembrance. I only know that the directors, in all their interviews, were intelligent as regards the words of the charter.

254 Int. 39. Then, according to your recollection and understanding of the matter, the directors, at the meeting to which you have referred, adopted the plan of selling the right to occupy the stalls for a limited period, with a thorough knowledge of the provisions of the charter and of its legislative history?

A. I can say nothing as to what was done or declared by the directors in their collective capacity. I regarded them as intelligent as regards the charter itself; but know nothing at all as to what they knew of its legislative history.

Int. 40. Applying the last preceding question to yourself, personally, what have you to say as to your own knowledge at that time of the provisions of the charter and of its legislative history?

A. I knew nothing of its legislative history except what is shown on the face of the charter. I had heard the charter read. I probably possessed a copy, but regarded myself as one of the least-informed members of the board in regard to it.

Int. 41. The second section of the charter provides that "the person who shall offer the highest price at or beyond such minimum for any such stand, stall, or privilege, shall be entitled to the occupation thereof, and shall be considered as having the good will and the right to retain the possession thereof so long as he chooses to occupy the same for his own business, and pay the rent therefor." What did the directors, at the meeting to which you have referred when the tacit understanding was reached, say in respect of the provision which I have just quoted?

A. I have not located in any particular meeting the reaching of a tacit understanding, and I am wholly incapable of giving any arguments or explication of this point by any members of the board.

Int. 42. You have stated that there was, prior to December 20, 1870, an understanding among the directors of the company that the right to occupy the stalls should be first sold for a period of two years, "and at the expiration of the two years for a period not then defined." Was not the provision of the charter to which I have referred considered by the directors, of whom you are one, before such an understanding was reached?

A. The paragraph in question must have been considered; but, as I believe, never in the light of authorizing a perpetual sale, as our
255 lease was for ninety-nine years, and as the context of the charter was regarded as wholly in conflict with the idea of a sale for unlimited time.

Int. 43. As you appear to be familiar with the charter, I will trouble you to point out any provision in the context inconsistent with the exercise of the right of occupation secured by the provision which I have ust quoted.

A. The provisions in section 2 of the charter which provide for a sale for one or more years, and the provision in the same section respecting subsequent sales and leases, and the proviso in section 12 of the charter.

Redirect examination by M'r Chandler:

Int. 1. Look at the record of directors' meeting, May 23, 1872, Exhibit A, deposition B. D. Whitney, pages 21 to 28, of the printed record in

this cause, and state whether you recollect any formal or definite fixing of the term for which the stalls should be sold, prior to that date.

A. I do not.

THOMAS C. CONNOLLY.

Subscribed and sworn to before me this 23d day of December, A. D. 1875.

T. A. LAMBERT,
Examiner in Chancery.

N. G. ORDWAY:

N. G. Ordway, recalled for the defendant, did thereupon depose, testify, and say as follows:

Int. 1. State whether or not you were present at a meeting between the representatives of the market-dealers and of the market company, in Washington, on December 20, 1870, reported in the Patriot and Republican of December 21; if so, state if you know the object of said meeting.

A. I think I was present, and that the object of the meeting was to make arrangements about locating the dealers in the new sheds which were built after the fire.

Int. 2. In relation to this date of December 20, when had the fire taken place, and when were the temporary sheds constructed, and what occasioned the construction of those sheds?

A. The fire had occurred a few days previous, and a resolution had passed Congress, on the 20th, directing the market company to
256 erect the temporary sheds, and the meeting was held on that evening for the purpose of arranging for the size of these sheds, and to perfect a plan which would be just to all in locating the dealers in these new temporary buildings. These temporary sheds were commenced as soon as the authority was given, and were completed and occupied for the Christmas market, December 25.

Int. 3. State, if you recollect, how long from the date of the fire to the completion and occupancy of the sheds, and how many days the sheds were in construction?

A. Just about one week from the date of the fire to the occupancy of the new sheds. The time actually occupied in building the sheds, before they were occupied, was three or four days.

Int. 4. State whether or not the construction of the sheds was rapid, about how many men were employed, and whether or not the week was a busy one.

A. The construction of the sheds was pushed with great rapidity. From three to five hundred men were employed most of the time, night and day. The building committee were on the ground nearly all the time, and personally aided in superintending the work. It was a very busy week. I spent all my time during that week, with the exception of a few hours for sleep, attending to market matters—mainly the construction of these sheds.

Int. 5. What was the occasion of this haste?

A. Citizens were suffering for conveniences to secure their marketing, and, as it was the week before Christmas, the dealers were very clamorous to have the market ready for Christmas, as they considered that one of their great days, perhaps the most profitable in the whole year.

Int. 6. State whether or not the object you have stated of the meeting of December 20 was the only object thereof, so far as you know.

A. I so understood it, and I am quite sure that that was the business transacted at the meeting.

Int. 7. State whether or not, prior to or at that meeting, or during that week, or about that time, the directors or principal, or any stockholders, had any meeting or conference, or came to any determination, as to the time or terms of the sale of stalls, to be made under the second section of the charter, when the permanent market buildings should be constructed.

257 A. There was no such meeting to my knowledge, and I do not recollect any discussion at or about that time by any of the parties named with reference to the stalls in the permanent market building. There certainly was not any determination arrived at by any persons authorized to act for the market company.

Int. 8. State what, if anything, had been done by the company prior to the fire toward the construction of the permanent market buildings.

A. Arbitrations had been commenced, under the tenth section of the charter, to determine the value of certain small buildings on Seventh street, south of the main market building, and bids had been received for putting in the foundation of a building on Seventh street, two hundred feet long and about eighty feet wide, on the south side of the market-lot

Int. 9. Had any contract been made for this Seventh-street building, or anything been done about the Ninth-street building or B street wing?

A. No contract had been made for the Seventh-street building or for the B-street or Ninth-street buildings. I am not certain, however, whether the arrangements to put in the foundation for the Seventh-street building had been entered into at that time.

Int. 10. When was the Seventh-street foundation put in that building and the Ninth and B street buildings constructed and completed?

A. The foundation for the Seventh-street building was put in very late in the fall of '70 or the first of January, of '71. The Seventh-street building was built during the summer of '71; the Ninth and B street buildings were begun during the latter part of that year, and all were completed July 1, 1872.

Int. 11. State whether or not, prior to the fire of December, 1870, the company had taken actual physical possession of the front market buildings which were destroyed.

A. The company had not taken possession of these buildings, and they were still in the control of the city authorities, who collected rents up to that time and until the 1st of January, 1871, from and after which time the company received and collected rent for the new sheds.

Int. 12. How long were the new sheds occupied and rents collected by the company?

A. From January 1, 1871, to July 1, 1872.

258 Int. 13. State whether or not you remember a statement at the meeting of December 20 by M'r A. R. Shepherd or any one as to the intention of the company in relation to the character of the rights to be given to parties who should take stalls in the permanent market buildings.

A. I do not remember hearing any statement made by M'r Shepherd or any one else upon that subject.

Int. 14. State whether or not you remember a statement by M'r Shepherd or any one that it was the intention of the company to give parties who took stalls in the permanent buildings vested rights therein, which would belong to them for all time to come, or which they could hand down to their children, or that in substance.

A. I do not remember hearing any such statement made.

Int. 15. State whether or not, according to your recollection, the sub-

this cause, and state whether you recollect any formal or definite fixing of the term for which the stalls should be sold, prior to that date.

A. I do not.

THOMAS C. CONNOLLY.

Subscribed and sworn to before me this 23d day of December, A. D. 1875.

T. A. LAMBERT,
Examiner in Chancery.

N. G. ORDWAY:

N. G. Ordway, recalled for the defendant, did thereupon depose, testify, and say as follows:

Int. 1. State whether or not you were present at a meeting between the representatives of the market-dealers and of the market company, in Washington, on December 20, 1870, reported in the Patriot and Republican of December 21; if so, state if you know the object of said meeting.

A. I think I was present, and that the object of the meeting was to make arrangements about locating the dealers in the new sheds which were built after the fire.

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A. The fire had occurred a few days previous, and a resolution had passed Congress, on the 20th, directing the market company to
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Int. 3. State, if you recollect, how long from the date of the fire to the completion and occupancy of the sheds, and how many days the sheds were in construction?

A. Just about one week from the date of the fire to the occupancy of the new sheds. The time actually occupied in building the sheds, before they were occupied, was three or four days.

Int. 4. State whether or not the construction of the sheds was rapid, about how many men were employed, and whether or not the week was a busy one.

A. The construction of the sheds was pushed with great rapidity. From three to five hundred men were employed most of the time, night and day. The building committee were on the ground nearly all the time, and personally aided in superintending the work. It was a very busy week. I spent all my time during that week, with the exception of a few hours for sleep, attending to market matters—mainly the construction of these sheds.

Int. 5. What was the occasion of this haste?

A. Citizens were suffering for conveniences to secure their marketing, and, as it was the week before Christmas, the dealers were very clamorous to have the market ready for Christmas, as they considered that one of their great days, perhaps the most profitable in the whole year.

Int. 6. State whether or not the object you have stated of the meeting of December 20 was the only object thereof, so far as you know.

A. I so understood it, and I am quite sure that that was the business transacted at the meeting.

Int. 7. State whether or not, prior to or at that meeting, or during that week, or about that time, the directors or principal, or any stockholders, had any meeting or conference, or came to any determination, as to the time or terms of the sale of stalls, to be made under the second section of the charter, when the permanent market buildings should be constructed.

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Int. 9. Had any contract been made for this Seventh-street building, or anything been done about the Ninth-street building or B street wing?

A. No contract had been made for the Seventh-street building or for the B-street or Ninth-street buildings. I am not certain, however, whether the arrangements to put in the foundation for the Seventh-street building had been entered into at that time.

Int. 10. When was the Seventh-street foundation put in that building and the Ninth and B street buildings constructed and completed?

A. The foundation for the Seventh-street building was put in very late in the fall of '70 or the first of January, of '71. The Seventh-street building was built during the summer of '71; the Ninth and B street buildings were begun during the latter part of that year, and all were completed July 1, 1872.

Int. 11. State whether or not, prior to the fire of December, 1870, the company had taken actual physical possession of the front market buildings which were destroyed.

A. The company had not taken possession of these buildings, and they were still in the control of the city authorities, who collected rents up to that time and until the 1st of January, 1871, from and after which time the company received and collected rent for the new sheds.

Int. 12. How long were the new sheds occupied and rents collected by the company?

A. From January 1, 1871, to July 1, 1872.

258 Int. 13. State whether or not you remember a statement at the meeting of December 20 by M'r A. R. Shepherd or any one as to the intention of the company in relation to the character of the rights to be given to parties who should take stalls in the permanent market buildings.

A. I do not remember hearing any statement made by M'r Shepherd or any one else upon that subject.

Int. 14. State whether or not you remember a statement by M'r Shepherd or any one that it was the intention of the company to give parties who took stalls in the permanent buildings vested rights therein, which would belong to them for all time to come, or which they could hand down to their children, or that in substance.

A. I do not remember hearing any such statement made.

Int. 15. State whether or not, according to your recollection, the sub-

ject of the character of the rights in the permanent buildings, or the subject of the permanent buildings, was mentioned, considered, or discussed at that meeting.

A. I have no recollection of hearing any discussion or talk upon that subject.

Int. 16. Were you or not present during the whole of that meeting?

A. I think I was, and listened very attentively, as I expected to have charge of the arrangements agreed upon in relation to building the temporary buildings and locating the dealers therein.

Int. 17. State whether or not at that meeting or at any other time M'r Shepherd, or any representative of the company, was authorized to inform the plaintiffs, or any of the market-dealers, that purchasers at the sale of stalls in said market, under said charter, would obtain a right to occupy in perpetuity the stalls or stands so purchased.

(Objected to, unless the authority referred to is specifically stated by counsel.)

A. No one was ever authorized, to my knowledge, to make such a declaration or agreement on behalf of the Market Company.

Int. 18. State when the directors definitely and formally decided to sell the stalls for a term of two years.

A. I think it was at a meeting held May 23, 1872, the proceedings at which are annexed to the deposition of B. D. Whitney, secretary.

Int. 19. State when, if at all, you first heard the alleged remark
259 of M'r Shepherd assigned by the dealers or any of them as a reason for their claim of a perpetual right to their stalls.

(Objected to because the assumption is erroneous.)

A. The first I heard of this alleged remark was towards the close of the two years' term for which they purchased at the auction sale, and about the time that I first heard that they set up a claim to hold the stalls in perpetuity.

Int. 20. State whether or not in 1872, at the time when the two years' term was fixed by the directors, or when the fact that the sale was to be for two years was communicated to the dealers, or at or during the sale itself, you heard any one assign the alleged remark of M'r Shepherd as a reason why the sale should not be for the term of two years, but should be for an indefinite or perpetual term.

(Objected to as vague, indefinite, and irrelevant.)

A. I did not hear any one assign any such remark of M'r Shepherd or any one else as a reason for a sale for an unlimited period at the time the term was fixed, or at or during the sale of stalls in 1872. I think M'r Shepherd was present, and acted with the board of directors when the two years' term was agreed upon, and I am quite certain that he did not state to the board of directors or in any way intimate that he had ever committed himself to the dealers that the stalls should be sold in perpetuity or for an unlimited term of years. I am certain he never made any such statement to me.

Int. 21. Have you read the testimony of M'r Thomas Berry, 236 and 237 printed record; if so, state whether or not there has been to your knowledge any distribution of free stock in connection with the defendant company, or anything calculated to make M'r Berry and M'r Riggs agree that the proceedings of the company were an imposition upon the public and the dealers; also state, if you know, to what M'r Riggs and M'r Berry alluded.

(Objected to as irrelevant.)

A. I have read what purports to be M'r Berry's testimony, and think he and M'r Riggs must both have referred to his associate incorporators

or those comprising the first company, which company went out of existence by a failure to attempt a compliance with the charter, and the present company demanding and receiving from the incorporators and first company a complete renunciation of all claims of every kind
260 and description in connection with the charter before organizing the present company and commencing the work. I have been a director and a member of the building and other important committees since the present company was formed, and there never has been to my knowledge a dollar's worth of free stock promised, given, or in any way conveyed to any person; every share of stock, according to my best knowledge and belief, has been regularly subscribed and paid for according to the terms of the charter; there has never been anything in the proceedings of the company that any fair-minded person could call an imposition upon the public or the dealers; on the contrary, the company have expended large sums of money not required by the charter to secure the very best accommodations for the dealers and the public. I am sorry to believe, however, that the present troubles of the market company are largely due to our refusal to accede to demands which have been made upon us for free stock and other privileges which we could not properly grant.

(M'r Elliot objects to any panegyrics upon the market company by this witness.)

The examination-in-chief of this witness here closed, when he was excused upon agreement between counsel that he should be recalled for cross-examination at the next session.

T. A. LAMBERT,
Examiner.

PRESTON S. SMITH:

Preston S. Smith, a witness on behalf of the defendant, being recalled, his examination-in-chief was proceeded with as follows:

Int. 1. State the circumstances of the payment by B. F. Hunt, of May 21st, 1874, of $101.00.

A. On the 21st of May, '74, M'r B. F. Hunt gave to M'r Lafferty, our collector at that time, a check for $101 on account of rent for the quarter ending March 30, 1874. He wrote on that check "in full to April 1st, 1874, with per cent. off." I objected to the writing on the receipt, and he asked me to take it as it was, and if it was not correct, after seeing M'r Ordway, the superintendent, he would rectify it afterwards. I then consented and agreed to give him a receipt on account, and then made out a receipt, the stub of which I have here, which shows it was on account.

Date, May 21st, 1874.
To B. F. Hunt,
261 Stand No. 566, 567, 568.
For account of rent for 1st qr., 1874.
Amount $101.

The stub was originally written, "for ¼ rent for 1st qr., 1874," and changed at the time the receipt was made out to read "for account of rent for 1st qr., 1874," as the payment then was not in full for a quarter's rent. My book of stubs and receipts had been prepared long before, with the expectation that payments would be in full. I had requested M'r Lafferty to call upon M'r Hunt for the balance due upon this quarter, and he declined paying for some time. After repeated calls for payment, he stated to M'r Lafferty that he had a receipt in full. Afterwards

I met him on the street, and spoke to him about the receipt, and he then stated how the receipt read, saying it was in full to April 1st, 1874. I stated to him I did not think it was as he stated, but if it was, it came through the receipt being partially prepared, previous to the payment of this sum, for a full quarter's rent, and that I had neglected to cross out the "¼ rent," and substitute "on account of rent for 1st qr., 1874," as my book stated. He then repeated that the receipt was for a full quarter's rent, but that he was not disposed to make any trouble about it; that he would call at the office and show his receipt, and if he was not correct, he would pay it. He never called, and did not show me the receipt, and I have had no further conversation with him in regard to it.

Int. 2. How in your belief, was the receipt written?

(The belief of Smith is respectfully objected to.)

A. In my belief, it was "on account of rent for 1st qr., 1874."

Int. 3. Unless it be this Hunt case, do you know of any payment ever accepted as in full by the company after the first ten days of the quarter, with a deduction of 20 per cent. upon the amount due?

A. I do not.

Int. 4. State what market-dealers have tendered, or offered you money, which you have not received, since July 1, 1874, with the circumstances, briefly.

A. John Kehl offered money, which I offered to accept and give him the qualified receipt. He declined to take the receipt, and did not leave the money. George M. Oyster also came into the office, sat down,
262 and counted out some money, and asked for a receipt. While he was counting out the money, I made out one of the qualified receipts for a quarter's rent, after which I reached out my hand to take hold of the money, he having his hand hold of one end of the money, and refused to give it to me, saying he wished to see the receipt I would give him. I stated that I had the receipt, but usually took the money before I passed receipts. He then asked the privilege of seeing the receipt, said he did not wish to take any advantage, and I passed him the receipt to read. After reading it, he stated that he should not take any such receipt as that, handed back the receipt, and put his money in his pocket-book and went out. Jerome J. Lightfoot, Theodore Barnes, Richard C. Mann, and Edward Brooke came to the office and inquired what receipts we would give them. I showed them the qualified receipt, and they declined to take that receipt for money. I do not recollect that any of these last named gentlemen offered me any money. I have no recollection of any other persons tendering or offering me any money which I refused to receive.

Int. 5. Were you or not under any instructions not to receive money unconditionally tendered?

A. I was not so instructed. I was instructed to receive it when unconditionally tendered.

(Question and answer objected to, unless the instructors are named by counsel and the witness.)

Examination-in-chief of this witness here closed, and the taking of testimony was adjourned until Friday Dec. 24, 1874, at 10 o'clock A. M.

T. A. LAMBERT,
Examiner.

FRIDAY, *December* 24, 1875—10 o'clock a. m.

Met pursuant to adjournment, R. K. Elliot, esq., of counsel for complainants and the witness, N. G. Ordway, being in attendance; whereupon the cross-examination of the latter was proceeded with as follows:

N. G. ORDWAY.

Int. 1. How often did the board of directors meet after the organization of the company to the 1st of June, 1872?

A. They met quite often during the first part of the year '71 and the first portion of the year '72. During the summer season or latter
263 part of each year there was seldom a quorum in the city. I was present at nearly, if not quite, all the meetings during the first portion of each of the years I have mentioned, and up to July, '72.

(At this point, M'r Chandler, of counsel for the defendant, entered the room.)

Int. 2. Were M'r Shepherd and M'r Connolly directors of the company during the period to which you have referred?

A. I think they were, although M'r Shepherd did not generally attend the meetings of the board.

Int. 3. Prior to the 23d of May, '72, was there any understanding or agreement between the directors as to the term for which the company would first sell the right to occupy the stalls?

A. There were some discussions as to whether the stalls would be sold for ten years, or for a shorter period. I don't remember of hearing any director advocate selling for a longer period than ten years, and I am quite sure that no definite or final action was taken by the board of directors until the meeting in May referred to.

Int. 4. Had any such discussion occurred prior to December 20, 1870?

A. There may have been some talk between some individual members of the board, but I am quite sure that the subject of the term of years for which the sale would be made had never been brought before the board of directors for action.

Int. 5. Then at the time when, as is alleged, M'r Shepherd made the remarks attributed to him in the record in this cause, there existed no reason why his view of the matter should have been contradicted, and no authority by virtue of which it could have been successfully controverted?

A. I think if M'r Shepherd had made the remark attributed to him with a view of in any way binding the company, or its future action on this subject, that there was a very good reason why such remarks would have been controverted by a majority of the directors, if the matter had come to their knowledge.

Int. 6. The directors, according to your own statement, reached no definite conclusion as to the term for which they would sell the right to occupy the stalls, until the 23d of May, '72; how can you say that in December, 1870, Shepherd's view of the charter would have been criticized and combat'ed by other directors?

264 A. I have never heard or understood from M'r Shepherd that he entertained views in accordance with the alleged remark at the meeting on the 20th of December. There was, however, at that time a very good reason why M'r Shepherd would not at that time attempt to bind the action of the Market Company without authority of the board of directors. The reason I refer to was, that M'r Shepherd, having been a member of the old board of directors of the first company, and having failed to secure funds to even commence the work, it was agreed, by M'r Shepherd and others of the old company, at the time of the organization of the second or present company, that the stockholders who came in at that time and held a majority of the stock should have a majority of the new board of directors, and a controlling influence in the new company, in consideration of having furnished so large a share of the money to build the market buildings; and for this reason, if for no

other, I am quite sure M'r Shepherd would not at that time have attempted to say anything or do anything that would bind the company on so important a subject as the sale of the stalls in the permanent buildings, then not hardly commenced, without a vote authorizing him so to do at a full meeting of the board.

(Objected to as not responsive to the question, and as being an argument.)

Question repeated.

A. I will answer further that a mere expression of opinion of an individual member of the board of directors, made at an informal meeting, as was the one of the 20th of December, might not have attracted attention or provoked contradiction.

Int. 7. Was not the meeting of December 20, 1870, in substance, a conference between the directors of the Market Company and the dealers respecting all differences between the conferees which arose subsequent to the enactment of the charter?

A. It was not, so far as I recollect or understood it at the time. My recollection of the meeting is, that it was a conference of some of the directors, less than a quorum, I think, and certain market-dealers, with reference to speedily complying with the resolution of Congress requiring the erection of sheds, and to arrange for locating the dealers therein.

Int. 8. State what amount was actually paid by the defendant company for the private property standing prior to the fire upon the grounds embraced within the charter?

265 A. I cannot state the amount from recollection; the record of awards by arbitrators and books of the company will probably show.

Int. 9. Were any of the awards paid?

A. I think all of the awards and agreements, where awards were not required by the owners, have been promptly paid by the company.

Int. 10. If the company was not in possession of the land granted by the charter prior to the fire, upon what ground did it pay for private property destroyed by conflagration when not in its possession?

(Objected to as assuming two facts not proved or correct.)

NOTE BY COUNSEL FOR COMPLAINANT.—Direct testimony of this witness is that company did not take possession until on or about the 1st of January, 1871, and testimony on cross-examination is that company paid all awards against it for private property on the market grounds.

NOTE BY COUNSEL FOR DEFENDANT.—The counsel is mistaken as to the testimony of the witness.

A. I have not testified that it did pay for property that was destroyed, but if it did, the payment was probably made upon award made, or agreement concluded, before the fire. It is possible that the company gave some of the dealers lumber to aid in preparing their temporary places, and in small sums of money to enable them to commence business after the fire, although they were not legally bound to do so. I think there were a few such cases.

Int. 11. At the time you acted as auctioneer and sold the right to occupy these stalls, did you read to the persons then and there assembled the whole of the 2d section of the company's charter, and state that you were selling in accordance therewith?

A. I think the terms and conditions of sale were stated first by the president of the company, M'r Emery, M'r Chandler, or some other director, and almost every conceivable question relating to the charter was asked by the dealers and answered by the president, or director

acting, before I commenced as auctioneer. When I commenced the sale as auctioneer I restated all of the terms and conditions of the sale, exhibited tables of rental as fixed by the directors and approved by the governor, and referred to the sections of the charter authorizing the sale. I cannot at this moment remember whether I read all the section referred to or not; I know I referred to the section.

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Int. 12. You state in your direct testimony that the company has issued no free stock. Do you mean to be understood by that as stating that all the stock issued by the company has alike been paid for by money?

A. I do, according to my best knowledge and belief; and I will add that I have taken great pains to keep fully advised upon this subject.

Int. 13. Did the present company pay for any free stock issued by the original incorporators, or any evidences of interest in such stock issued by said incorporators?

A. Never, to my knowledge.

Int. 14. Do you know anything about a number of shares of stock of the defendant company issued to the late Judge James Hughes?

A. I am not aware that the present Market Company ever issued stock to Judge Hughes, unless a share or two was issued to him regularly subscribed for on the books.

Int. 15. Do you not know that Judge Hughes received some evidence in writing of an interest in the stock authorized by the charter to be issued to the amount of $20,000, or thereabouts?

A. I do not know that Judge Hughes ever received from the present Market Company any writing or authority authorizing him or any one else to receive any of the company's stock in any other way except by regularly paying for the same, like any other person.

Int. 16. Have you not heard from the officers and directors of the defendant company that Judge Hughes did receive the stock that I have indicated, which stock was issued under the charter, either by the present incorporators or by the original incorporators?

A. I have not heard from any officer that Judge Hughes received any such amount of stock from the defendant company. I did hear that he purchased of some stockholder, or stockholders, some stock which purported to be guaranteed by the parties selling it to him against future assessments. I had no knowledge upon that subject myself.

(The witness is requested by counsel for complainants to produce all the books of the company which show the name of James Hughes as original stockholder or assignee of the stock of the defendant company.)

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A. I will try to see that they are produced.

Int. 17. Did you testify before the Senate Committee upon Public Buildings and Grounds in the summer of 1874, or prior thereto, relative to the affairs of the Washington Market Company?

A. I gave some statements orally, and some tables and other statements in writing, before the Senate committee. I cannot now recall the precise date. A portion of what I gave was taken down and printed, and a portion was entirely omitted. Whether what I gave could be called testimony, or information to the committee, I hardly know.

Int. 18. Were you sworn, and then examined by the chairman of the committee as a witness?

A. I think I was, at one time.

Int. 19. Have you seen since that day what purports to be the printed report of your testimony, appended to Senate Report 449, 43d Congress, 1st session?

A. I have seen in a printed report what I supposed was an abstract of my testimony.

Int. 20. Is this what you refer to, commencing at the bottom of page 26 of said Senate report and ending upon page 35? (Handing to witness the Senate report.)

A. This is a portion of the report I referred to.

Int. 21. Is it true that the defendant company, after the agreement with and conveyance to the District of Columbia of the "front land," actually reduced the rental of stalls 20 per cent. less than the rate originally prescribed?

A. It is true that the defendant company about that time increased the discount for prompt payment, or payment in advance, to 20 per cent., from perhaps five and afterwards ten per cent., I think.

Int. 22. Has there been since the 18th of April, 1872, any reduction in the rental of stalls, other than by way of discount for prompt payment, or payment in advance?

A. I don't think the directors ever voted any absolute reduction, except for prompt payment, or payment in advance, or within the first ten days. I, myself, as superintendent, had been laboring to reduce the expenses of the company, with a view of continuing to increase the percentage for prompt payment, which would amount to a reduction to those who complied with the regulations, and when the arrangement was made with the District authorities for the front land, which I
268 supposed would reduce the amount of rental which would have to be paid for the support of the poor, I thought this a good time to make the reduction for prompt payment, in compliance with the regulations of the company, as large as possible.

Int. 23. Was it not a part of the agreement between the District authorities and the company, expressed or implied by the parties, that in consideration of the reduction of the rental of $25,000 imposed by Congress to $7,500 that the company would reduce the rental of stalls 20 per cent.?

A. I was not upon the committee of the board of directors that made the arrangement with the District authorities, and took no part, as I remember, in these negotiations.

Int. 24. Don't you know the fact which I allude to?

A. After the negotiations had been perfected, deeds signed and passed, I had a conference with Henry D. Cooke, in which he advised that we should increase the discount for prompt payment as fast as possible, and suggested that we should make it twenty per cent., which I think was done.

Int. 25. Do you now say that there was no agreement upon the part of the company, at the time of the conveyance referred to, whereby the quantum of rent affixed to each stall, or class of stalls, should be reduced 20 per cent.? I expressly exclude the idea of discount for payment in advance.

A. I have stated that I did not take part in the negotiations, and the fact sought to be obtained is not within my knowledge.

(Counsel for complainant requests the witness to have the record produced showing what action, if any, was taken by the defendant company in respect of the reduction of the rental of stalls. The witness answers that he will produce any record upon that subject in his possession or that he can obtain.)

Int. 26. Have you not stated to the Senate Committee on Public Buildings and Grounds, and did you not state in the presence of Oyster and others at the Capitol, that, contemporaneously with the arrange-

ment with the District authorities, the company, in execution of that arrangement, reduced the rental of stalls 20 per cent., or use an expression to that effect?

A. I may have used the words "reduced 20 per cent.," instead of saying that a reduction for prompt payment of 20 per cent. had been made.

I never intended to be understood as saying that the company
269 made any reduction except for payment, or payment in advance, or within the first ten days of the quarter. My testimony before the Senate committee was taken down by the clerk in long hand, and many of the expressions I used in explanations were omitted, and I called the attention of the clerk and one or more members of the committee to this matter shortly after the report appeared. I don't think the report of my testimony, as published, is a verbatim report of what I said.

Int. 27. Is there any difference, according to your understanding of the English language, between the terms "discount for payment in advance" and the term "reduction," as applied to stall rental?

A. I think there is a wide difference, as applied to collections of rent in the Centre Market. If an absolute reduction of 20 per cent. were made upon all the stalls in that market, without regard to whether the occupants paid or not, the rental of the market would not produce as much by several thousand dollars a year as it would under the system adopted of allowing 20 per cent. discount for prepayment, as before described, for the reason that a large number of occupants of stalls leave the market every month without paying rent.

(Objected to as not responsive, but argumentative.)

Redirect:

Int. 1. Did you state before the Senate committee, or elsewhere, that the discount was made in execution of the agreement with the District authorities?

A. I did not intend to be so understood, as I did not make the arrangement with the District authorities.

Int. 2. Do you recollect ever making such a statement?

A. I have no recollection of making a statement in that form.

Int. 3. Did the directors ever vote any reduction of or discount in the rents, to your knowledge?

A. I have no positive recollection upon that point. The records will show for themselves.

Int. 4. At the meeting of December 20, did the dealers' committee converse with you personally; if so, to what extent, and on what subject; and did they or not, to your recollection, converse about the subject of the permanent market buildings?

A. M'r Oyster and M'r Hunt and others conversed with me
270 about the size and form of the new sheds to be erected, and the location of the dealers therein. They were exceedingly anxious to have the building constructed as near as possible on the ground occupied before the fire, and to have their stalls located just as they stood in the old building. They assured me, if this could be accomplished, there would be no further trouble with the dealers. M'r Oyster was especially rejoiced at being allowed to go on the committee to locate the stalls, although some other dealers protested against his appointment. I did not hear any talk or discussion in relation to the sale of stalls in the permanent buildings, and if any such talk was had, it must have been between individuals in the most incidental way, as I was listening attentively to all that was said.

N. G. ORDWAY.

Subscribed and sworn to before me this 24th day of December, A. D. 1875.

T. A. LAMBERT,
Examiner.

Adjourned to meet again Monday, December 27, 1875, at 1 o'clock p. m.

MONDAY, *December* 27, 1875—one o'clock p. m.

In consequence of the illness of M'r Elliot, of counsel for complainant, the further taking of testimony was adjourned until Tuesday, December 28, 1875, at 10 o'clock a. m.

T. A. LAMBERT.
Examiner.

TUESDAY, *December* 28, 1875—one o'clock a. m.

Met pursuant to adjournment; R. K. Elliot, esq., of counsel for complainant, W. E. Chandler, esq., of counsel for defendant, and the witness, Preston S. Smith, being in attendance; whereupon the cross-examination of the latter was proceeded with, as follows:

PRESTON S. SMITH:

Int. 1. In the original and amended tables filed in this cause, purporting to show the amount of rent severally alleged to be due by the complainants, did you calculate the same upon the basis of the schedule of rents of stalls established on the 18th of April, 1872?

A. I did.

PRESTON S. SMITH.

271 Subscribed and sworn to before me this 28th day of December, A. D. 1875.

T. A. LAMBERT,
Examiner.

WILLIAM E. CHANDLER.

WILLIAM E. CHANDLER, a witness recalled on behalf of the defendant, did thereupon depose, testify, and say as follows:

Int. 1. State whether or not you were present at the meeting of December 20, 1870; if so, state what was the object of that meeting.

A. I think I was present. The object of the conference was to arrange with reference to the character of the new temporary sheds, and the location of the dealers therein.

Int. 2. State what had occurred to occasion such conference.

A. The destruction about four days previous of the old market sheds, and the resolution of Congress of that day requiring the company to erect, promptly, temporary market accommodations for the market-men who had been driven out by the fire.

Int. 3. State whether or not any other subject than that you have above stated was considered, discussed, or determined at that meeting.

A. Not to my recollection.

Int. 4. Were you or not attentive to all that took place at that meeting?

A. I think I was.

Int. 5. State whether or not you remember a statement by M'r Shepherd, or any one, that it was the intention of the company to give parties who took stalls in the permanent buildings vested rights therein

which would belong to them for all time to come, or which they could hand down to their children, or that in substance.

A. I do not remember any such statement, either by M'r Shepherd or by any one else.

Int. 6. State whether or not, according to your recollection, the subject of the character of the rights in the permanent buildings, or the subject of the permanent buildings, was mentioned, considered, or discussed at that meeting.

A. It was not, to my recollection.

272 Int. 7. State whether or not at that meeting, or at any other time, M'r Shepherd, or any representative of the company, was authorized by the company, or any of its officers, to inform the plaintiffs, or any of the market-dealers, that purchasers at the sale of stalls in said market under said charter would obtain a right to occupy in perpetuity the stalls or stands so purchased?

A. Neither M'r Shepherd nor any one was ever so authorized.

Int. 8. State when, if at all, you first heard the alleged remark of M'r Shepherd assigned by the dealers, or any of them, as a reason for their claim of a perpetual right to their stalls.

A. Never until after or about the time the two-year term had expired.

Int. 9. State whether or not the plaintiff Hoffman, or any other dealer, ever tendered to you, through M'r Merrick, rental for the stalls, or offered to you, through M'r Merrick, to pay such rental.

A. Never, except upon condition that the company would deduct 25 per cent. discount from the rent, close the market Mondays, Wednesdays, and Fridays, and light the gas earlier than 4 a. m. for the accommodation of those compelled to come earlier.

W'M E. CHANDLER.

Subscribed and sworn to before me this 28th day of December, A. D. 1875.

T. A. LAMBERT,
Examiner.

Adjourned to meet Wednesday, December 29, 1875, at 12 m., the cross-examination of the witness W'm E. Chandler being postponed until that time.

T. A. LAMBERT,
Examiner.

WEDNESDAY, *December* 29, 1875—12 m.

Met pursuant to adjournment, Mess'rs R. T. Merrick and R. K. Elliot, counsel for complainants; W'm E. Chandler, esq., of counsel for defendant, and a witness on behalf of defendant, being in attendance; whereupon the cross-examination of the latter was proceeded with, as follows:

273 Int. 1. You have stated, in reply to the last interrogatory propounded, that no rent was ever tendered to you by Hoffman or any other dealer, directly or indirectly, except upon certain conditions specified in your answer; when was the proposition inferentially indicated in your answer made to you?

A. About August 4, 1874.

Int. 2. Was this not one of a series of propositions passing between the market company and the dealers with a view to the partial or complete adjustment of their differences?

A. I cannot say that it was one of a series. I understood it to be a formal statement by the dealers of the only conditions on which they would pay for use and occupation during the litigation. There were

conferences between myself and M'r Merrick which resulted in no arrangement, and which were not, as I understood it, to be made use of by either party to affect rights or any change in the respective attitudes of the dealers and the company.

Int. 3. Did the proposition referred to transpire in the course of those conferences?

A. It did, through the exhibition to me of a letter from M'r B. S. Elliot to M'r Merrick of August 4, '74; to which, however, I should not have alluded thereafter had it not been claimed by the dealers that, as a result of my conference with M'r Merrick, the dealers were to be understood as having tendered their rent to me.

Int. 4. Did you not state, in the course of those conferences, that the market company would not receive rent from the dealers unless protected, by receipt or otherwise, from the consequences of so receiving such rent as affecting its right to repossess or resell the stalls occupied by the dealers after the expiration of two years from the commencement of such occupation, or from the date of the original sale?

A. Not according to my recollection and understanding of the course and result of our conferences. I have no desire to go at length into the subject of what transpired therein, as there has been some difference in conversation between M'r Merrick and myself on the subject; but I am willing, if he desires it, to state fully the whole of our conferences as I believe them to have taken place.

Int. 5. I only desire an answer to such interrogatories as in my judgment are made necessary by the examination in-chief, and repeat the question in substance as follows: Did you not state in the course of those conferences that the market company could not receive rent from the dealers after the expiration of the period for which you claimed they held the stalls or stands without compromising its rights?

274 Ans. I did not so state. The whole conference, on my part, was for the very purpose of avoiding, if possible, a decision of the question what the company could safely do; which would arise if such tender or offer should be made.

Int. 6. From what paper are you reading?

A. I read the last sentence of my previous answer from a memorandum made by me last spring, when an oral difference arose between myself and M'r Merrick, which led me to put in writing my recollection and understanding of what took place between him and myself.

Int. 7. In what particular, in reference to the main feature of this subject, did you and M'r Merrick differ that induced you last spring to make the memorandum to which you have referred?

(Gen. Birney, of counsel for defendant, objects to this question as immaterial and irrelevant.)

A. I think on the precise point as to which M'r Merrick is now interrogating me. Possibly there were other differences.

Int. 8. Was it not as to the fact of whether or not in those conferences a tender was made to you on behalf of the market-men—I mean a tender in the way of a proposition to pay without the actual offer of money?

A. That was the substantial point of difference, whether or not an offer had been made to me to pay the rentals.

Int. 9. Did you not, in the course of those conferences, present to M'r Merrick two or three different forms of receipt to be given by the company to market-men for the purpose of ascertaining whether they would be acceptable or not, and whether the market-men would be willing to pay on such receipts?

A. I did.

Int. 10. What was the peculiar feature of those receipts? and if you have copies of them produce them.

A. That the payment of the sum received should affect no one's rights; substantially the receipt which is Exhibit H, deposition P. S. Smith, printed record, p. 64. Another draft was considered by M'r Merrick and myself, which was much longer, but to the same effect.

Int. 11. Why were these receipts prepared and submitted to M'r Merrick?

A. With the view, as already stated by me, of avoiding, if pos-
275 sible, a decision of the question what the company could safely do, which would arise if a tender or offer of rent, with a claim that it should be accepted under the old contract, should be made.

Int. 12. Did not M'r Merrick say to you, whilst you were considering those receipts, or one of them, that he saw no reason why the market-men should not be willing to accept them, but that they were not bound to do so, and might demand some condition from the company as a consideration for the new feature interposed in their contract by the receipts suggested.

A. I think he stated that in substance. He afterwards showed me the letter of B. S. Elliot, of August 4, 1874, representing the market-dealers, which I have referred to, which I think did not say expressly that they would pay and receive the qualified receipt, but said that they would pay rentals upon the three conditions which I have above stated.

Int. 13. The letter of Elliott referred to was given or exhibited to you by M'r Merrick as a reply from the market-men to your proposition submitting the qualified receipt, was it not; and was it not also understood between you and M'r Merrick at that time that, if accepted, the qualified receipt would be taken?

A. It was so exhibited, and such was our understanding.

Int. 14. Did not M'r Merrick state to you that the market-dealers were ready to pay rent as they had previously done under their contract with the company; and did there not arise between you a discussion thereupon as to the probable effect of such a payment?

A. I do not remember that M'r Merrick so stated to me. We discussed the question whether or not, if the market-men were to tender their rent to the company, it would be safe for the company to receive it. It was not treated by M'r Merrick or myself as certain that the company would decline to take the amount of rental if tendered by the dealers as a payment under their construction of their contracts with the company; on the contrary, M'r Merrick himself, in conversation with me, was inclined to the opinion that we could take rentals if so tendered, without assenting to the dealers' construction of their contract, or in any way affecting the rights of the company in the controversy as to the length of time for which the dealers had the right to occupy. I stated
that it was a doubtful question, upon which I had not made up my
276 mind; that the object of my conference with him was to avoid the necessity of meeting it by making an arrangement under which it would not arise.

Int. 15. Did you not say that your purpose was to get your rent, and did not M'r Merrick say that they were ready to pay the rent, and you decline to receive it without the qualified receipt, or say that the company would not or could not receive it without the qualified receipt, or some protection from the consequences of receiving it?

A. I did say that we proposed to get compensation for the use of our stalls during the litigation. I do not remember that M'r Merrick said that they were ready to pay rent. Most certainly I did not decline to

receive rent without the qualified receipt, or say that the company would not or could not receive it without that receipt, or some protection from the consequences. On the contrary, I distinctly stated to M'r Merrick that we had not made up our minds what we would do in case of such offer or tender; that it was a doubtful question, which I wished to avoid. He expressed the decided impression that we could safely take it, and I did not say that we could not or would not.

Int. 16. Then the entire discussion between you and M'r Merrick was as to the mode in which your client might most surely be relieved from any possible embarrassment, and M'r Merrick's clients in no way whatever benefited?

A. That is not an accurate statement of the purpose of the conference. Various reasons were stated and assented to on both sides why it would be desirable for both the company and the dealers to have rents paid during the litigation, without affecting the rights of either side.

Int. 17. Was there any reason stated why it would in any way particularly benefit M'r Merrick's clients to pay under the qualified receipt rather than under the same receipt under which they had theretofore paid?

A. No reason was stated why it would be any better for the dealers to pay under the qualified receipt than under the old receipt, if the company would give the latter.

Redirect by M'r Birney:

Int. 1. Did M'r Merrick, at the interview spoken of in your cross-examination, inform you of the names, the number of the dealers represented by him as counsel?

A. He did not, particularly; but I understood that he represented many associated dealers.

277 Int. 2. Did you know at that time, from any other source, who his clients among the market-dealers were, except M'r Hoffman and M'r B. S. Elliot?

A. I did not know, particularly, more than a few dealers whom I knew to be his clients.

WM E. CHANDLER.

Subscribed and sworn to before me this 29th day of December, A. D. 1875.

T. A. LAMBERT,
Examiner.

Adjourned until Thursday morning, December 30, 1875, at 10 o'clock a. m.

T. A. LAMBERT,
Examiner.

THURSDAY, *December* 30, 1875—10 o'clock a. m.

Met pursuant to adjournment: R. K. Elliot, esq., of counsel for complainants, and W. E. Chandler, esq., of counsel for defendant, being in attendance. No witnesses being present, adjourned until Friday, December 31, 1875, 10 o'clock a. m.

T. A. LAMBERT,
Examiner.

FRIDAY, *December* 31, 1875—10 o'clock a. m.

Met pursuant to adjournment: W. E. Chandler, esq., of counsel for

defendant, and the witness Adolf Cluss, produced on behalf of the defendant, being in attendance. Whereupon the latter, being duly sworn, was thereupon examined, and did depose, testify, and say as follows:

ADOLF CLUSS.

Int. 1. State whether or not you were present at the meeting of December 20, 1870; if so, state what was the object of that meeting, and what had occurred to occasion the same.

A. It was shortly after the conflagration of the old Centre Market; I was present at the meeting; the object was to assign the market stalls in the temporary sheds to be erected in accordance with the wishes of the market dealers.

Int. 2. State whether or not any other subject than that you have above stated was considered, discussed, or determined at that meeting.

A. None that I recollect.

278 Int. 3. Were you or not attentive to all that took place at that meeting?

A. As far as my memory goes I had to be attentive, for I was interested in the proceedings. I have no recollection that I went away before the meeting closed.

Int. 4. State whether or not you had there a plan of the temporary wooden buildings, and what your connection was with the proceedings of the meeting.

A. As far as I remember I had that plan there, and my duty was to assign the stalls in the temporary structures as near as possible where the dealers were before the fire.

Int. 5. State whether or not, according to your recollection, the subject of the character of the rights in the permanent buildings, or the subject of the permanent buildings, was mentioned, considered, or discussed at that meeting.

A. Not that I remember.

Int. 6. State whether or not you remember a statement by M'r Shepherd, or any one, that it was the intention of the company to give parties who took stalls in the permanent buildings vested rights therein which would belong to them for all time to come, or which they could hand down to their children, or that in substance?

A. I do not recollect any such statement.

Int. 7. State whether or not, so far as you know, at that meeting, or at any other time, M'r Shepherd, or any representative of the company, was authorized by the company, or any of its officers, to inform the plaintiffs, or any of the market dealers, that purchasers at the sale of stalls in said market under said charter would obtain a right to occupy in perpetuity the stalls or stands so purchased.

(Mess'rs Merrick and Elliot, counsel for complainants, here entered.)

(Objected to by M'r Elliot.)

A. It has not been given, within my knowledge. I don't recollect anything about it.

Int. 8. M'r Hoffman states in his testimony (printed page 205) the size of the hucksters' stands in the Washington market at 19¼ square feet; state, if you know, what is the actual size of those stands.

A. About two-fifths of the whole number of the hucksters' stands are six by eight feet in size, and containing 48 square feet, and the rest, or three-fifths of the whole number, are six by six, containing 36

279 square feet. The hucksters' stands, different from the butchers' and butter-dealers' stands, contain a stationary platform, with a closet underneath, and an open area in front for setting barrels, trays,

&c. M'r Hoffman, evidently, has left out the latter space, which forms a part of the hucksters' stands as much as the former.

ADOLF CLUSS.

Subscribed and sworn to before me this 31st day of December, A. D 1875.

T. A. LAMBERT.
Examiner.

SAMUEL S. SMOOT.

Samuel S. Smoot, a witness produced on behalf of the defendant, being duly sworn, did thereupon depose, testify, and say as follows:

Int. 1. State whether or not you were present at the meeting of December 20, 1870; if so, state what was the object of that meeting, and what had occurred to occasion the same.

A. I was present. The meeting was for the purpose of a conference between the market-dealers and some of the directors of the Washington Market Company, with a view to their location in the temporary sheds that were about being constructed, and locating them, as near as possible, in the original positions they occupied before the destruction by fire of the old building. M'r Cluss, the architect of the Washington Market Company, was present with a diagram, showing the number of stalls that the new temporary buildings would give. I offered the resolutions which were adopted by the meeting, looking to carrying out this arrangement, which was subsequently carried out, after a full and free conference between the company and the dealers, the dealers appointing a committee, with, I think, M'r George M. Oyster at the head of the committee, to make the selections, in accordance with the resolutions passed. After the buildings were completed—I mean the temporary sheds—there was a good deal of dissatisfaction among the dealers at the manner in which M'r Oyster had acted, in making selections for himself first, though subsequently the matter was finally adjusted, I believe, to the satisfaction of all concerned.

Int. 2. Were you or not attentive to all that took place at that meeting?

A. I was.

280 Int. 3. State whether or not, according to your recollection, the subject of the character of the rights in the permanent buildings, or the subject of the permanent buildings, was considered or determined at that meeting.

A. I have no recollection of any such subject being broached by any one. The market company at that time had not determined what character of permanent buildings they would put up. This meeting was solely for the purpose of making the locations in the temporary sheds or buildings. I, being a member of the building committee, had full knowledge at all times what the company proposed to do in relation to improvements.

(All of this answer, except the first sentence, objected to as not responsive by M'r Merrick.)

Int. 4. State whether or not you remember any statement by M'r Shepherd, or any one, at that meeting, as to the intention of the company in reference to the character of the rights to be given parties who should take stalls in the permanent buildings.

A. I have no knowledge or recollection of any such conversation.

Int. 5. State whether or not you remember a statement by M'r Shepherd, or any one, that it was the intention of the company to give par-

ties who should take stalls in the permanent buildings vested rights therein, which would belong to them for all time to come, or which they could hand down to their children, or that in substance.

A. I have no recollection of such conversation, and no one was authorized by the company to make such an arrangement.

Int. 6. State when, if at all, you first heard the alleged remark of M'r Shepherd assigned by the dealers, or any of them, as a reason for their claim of a perpetual right to their stalls.

(Objected to by M'r Merrick as irrelevant.)

A. It is only within the last three or four days. I saw it in print the following day after the meeting.

Cross examined by M'r Merrick:

Int. 1. Are you still a member of the company?

A. I am a stockholder and a director in the Washington Market Company.

281 Int. 2. Did you leave the meeting referred to in your examination-in-chief before it adjourned?

A. I did not. I remained until the meeting adjourned and the gentlemen came out.

SAM'L S. SMOOT.

Subscribed and sworn to before me this 31st day of December, 1875.

T. A. LAMBERT,
Examiner.

Whereupon the taking of testimony on behalf of the defendant was adjourned, without day, by direction of counsel.

T. A. LAMBERT,
Examiner.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, T. A. Lambert, examiner in chancery, do hereby certify that pursuant to the annexed order of the court the foregoing depositions were taken down before me and reduced to writing in the presence and from the statements of the witnesses, and in the presence of the counsel for the complainant and the defendants, respectively, who were then and there attending, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause. I further certify that I am not of counsel for any of the parties to said cause, nor in any way interested therein.

T. A. LAMBERT, [SEAL.]
Examiner in Chancery.

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN
vs.
THE WASHINGTON MARKET COMPANY. } No. 3797. Eq. doc. 13.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses, begun and held on the 18th day of December, A. D. 1875, and continued from time to time by me until the 31st day of December, A. D. 1875, when

282 the within depositions were taken, I, T. A. Lambert, an examiner in chancery, did cause to be personally present at my office in the Columbian College Law Building, in the city of Washington, in said District, Preston S. Smith, Thomas C. Connolly, N. G. Ordway, Wm E. Chandler, Adolf Cluss, and Samuel S. Smoot, to testify on the part and behalf of the defendants in a certain cause now depending in the supreme court of the District of Columbia, wherein James A. Hoffman is complainant and the Washington Market Company are defendants.

T. A. LAMBERT. [SEAL.]
Examiner in Chancery.

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN
vs.
THE WASHINGTON MARKET CO. } No. 3797. Eq. doc. 13.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses, begun and held on the 30th day of March, A. D. 1875, and continued from time to time by me until the 11th day of May, A. D. 1875, when the within depositions were taken, I, T. A. Lambert, an examiner in chancery, did cause to be personally present at my office rooms, 2 and 4, Columbian College Law Building, in the city of Washington, in said District, Benjamin D. Whitney, Preston S. Smith, Matthew G. Emery, Thomas Dowling, Edward B. Lafferty, N. G. Ordway, John T. Varnell, Moses Bradshaw, William E. Chandler, and Newton P. Reid, to testify on the part and behalf of the defendant in a certain cause now depending in the supreme court of the District of Columbia, wherein James A. Hoffman is complainant and the Washington Market Company are defendants.

T. A. LAMBERT, [SEAL.]
Examiner in Chancery.

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN
vs.
THE WASHINGTON MARKET CO. } 3797. Eq. doc.

It is this 21st day of May, A. D. 1875, stipulated and agreed by and between counsel in the above-entitled cause as follows, to wit:

1st. That all laws and other acts of the Government of the United States, and all ordinances of the late municipal government of the city of Washington, from the date of the location of the seat of government at Washington to the present time, relative to the Centre Market or the reservation on which it stands, and all recorded official acts of United States or city or District officials, shall be considered in evidence, so far as competent.

2d. Also, that all bills introduced in either House of Congress, with amendments thereto, in reference to the Washington Market Company, and also the legislative history of the bill to incorporate said Market Company, as contained in volumes 90 and 91, 2d session, 41st Congress,

Congressional Globe, shall be considered in evidence, so far as competent.

(Signed) R. T. MERRICK,
R. K. ELLIOT,
Counsel for Plaintiff.
WM BIRNEY,
WM E. CHANDLER,
Counsel for Defendant.

282½ HOFFMAN ET AL. *vs.* WASHINGTON MARKET COMPANY. } No. 3797. In equity.

This cause, it is hereby stipulated and agreed between the parties thereto, shall be, and the same hereby is, set down for final hearing on the bill and cross-bill, answers, exhibits, the evidence filed in the cause, and the demurrers, pleas, and proceedings in the same, and said evidence may be used under any of the issues therein, so far as competent.

January 22, 1876.

ELLIOT & MERRICK,
For Complainants.
JOS. H. BRADLEY,
W. BIRNEY,
Solicitors for Defendants.

(Endorsed:) Stipulation of solicitors fixing terms of hearing. Filed January 22, 1876, in open court. R. J. Meigs, clerk, &c., by R. J. Meigs, j'r, assistant clerk.

In the supreme court of the District of Columbia.

JAMES A. HOFFMAN ET AL, COMPLAINANTS, *vs.* THE WASHINGTON MARKET COMPANY, DEFENDANT. } No. 3797. Equity.

This cause coming on to be heard on the bill, answer, amended bill, and answer thereto, and the cross-bill and the answer of James A. Hoffman thereto, and the pleas and demurrers of the other defendants to said cross-bill, and the evidence in said cause, and the same having been argued by counsel and submitted to the court, it is thereupon, this seventh day of February, A. D. 1876, ordered, adjudged, and decreed by the court, that the rights of the complainant, James A. Hoffman, and his several co complainants, in the stalls and stands purchased by them, respectively, at the sale thereof made by the said Washington Market Company in the year 1872, and which said rights were, by the terms of said sale, to commence from the first day of July, A. D. 1872, did not expire and terminate by any valid limitations as to the time for the continuance of such rights and interest in two years from the said first day of July, A. D. 1872; and it is therefore ordered, adjudged, and decreed that the said defendant, "The Washington Market Company,"
283 be, and it is hereby, perpetually enjoined and restrained from selling or offering for sale the stands and stalls of the said several complainants in said original and amended bill, or of any of them, upon any claim or pretence that their said several rights and interests therein existed for the period of two years only, and expired on the first day of July, 1874.

And it is further ordered, adjudged, and decreed that the demurrer to said cross-bill be, and the same is hereby, sustained; and upon the issues joined on the pleas filed to the sixteenth paragraph of the said cross-bill, it is found by the court that the defendants to said cross-bill hold their said several stands and stalls claimed by them, respectively, at the rate of rental agreed upon between each of them and the Washington Market Company aforesaid, and are, each severally for himself, bound to pay said amount so fixed and agreed upon for the said several stalls and stands; and it is therefore ordered, adjudged, and decreed that they pay the same.

And whereas the said Washington Market Company has prayed an appeal to the general term from such portion of this decree as awards a perpetual injunction against the sale of the said stalls and stands, as aforesaid, and the said Hoffman and his co complainants having prayed an appeal from such portion of this decree as decides that they are liable for rent, and the said several parties having agreed in open court by their respective solicitors that, pending such appeals and any further appeals that may hereafter be taken from the said general term to the Supreme Court of the United States, receivers should be appointed to collect the rents so decreed to be paid, it is further ordered, adjudged, and decreed that Wm E. Chandler and Robert K. Elliot be, and they are hereby, appointed receivers to collect such rents from said several defendants to said cross-bill, and the same safely to keep and invest under the orders of this court; and it is further ordered that, before entering upon their office as such receivers, the said Chandler and Elliot shall file their respective bonds, each for himself, in the penal sum of $25,000, with sureties to be approved by the court, for the faithful performance of their duty as such receivers.

It is further ordered that the defendant, the Washington Market Company, do pay the costs of this cause.

Filed Feb'y 7, 1876.

R. J. MEIGS.

284 In the supreme court of the District of Columbia. February 18, 1876.

JAMES A. HOFFMAN ET AL.
vs.
THE WASHINGTON MARKET COMPANY. } No. 3797. Eq. doc. 13.

The defendant, the Washington Market Company, hereby appeals from so much of the decree passed in said cause on the 7th day of February, 1876, as adjudges that the rights of the said several complainants in the stalls and stands purchased by them, respectively, at the sale thereof made by the said Washington Market Company, in the year 1872, did not expire, by any valid limitations, in two years from the first day of July, 1872, and perpetually enjoins the defendant from selling, or offering for sale, the stands and stalls of said several complainants, upon the claim that their said several rights and interests therein existed for two years only, and expired on the first day of July, 1874.

And the defendant further appeals from so much of the said decree as orders that the demurrer of the plaintiff to the cross-bill of the defendant be sustained.

CHANDLER, BUTLER, BRADLEY, & BIRNEY,
Solicitors for Defendant, The Washington Market Company.

Filed February 18, 1876.

285 *Appeal to gen. term.—Filed Feb'y* 18, 1876.

In the supreme court of the District of Columbia.

HOFFMAN ET AL.
vs.
THE WASHINGTON MARKET CO. } 3797. Equity docket 13.

The clerk will enter an appeal from the decree passed February 7th, as per notice filed this day.

W'M BIRNEY,
Of Counsel for Def't.

Appeal entered as directed.
By the clerk.

Order fixing penalty of appeal-bond.—Filed Mar. 6, 1876.

The supreme court of the District of Columbia.

JAMES A. HOFFMAN ET AL.
vs.
THE WASHINGTON MARKET CO. } 3797. Equity.

The defendant in the above cause having appealed to the general term from a part of the decree pronounced in said cause on the 7th day of February, 1876, and desiring to give security to cover the
286 costs of the said appeal, it is hereby ordered that defendant give one freeholder as surety in the amount of two hundred dollars on a bond conditioned to pay all costs of said appeal if it should be decided against said defendant.

By the court.

A. WYLIE, *Justice.*

Appeal-bond to gen. term.—Filed Mar. 8, 1876.

In the supreme court of the District of Columbia, the 8 h day of March, 1876.

JAMES A. HOFFMAN, PLAINTIFF,
vs.
WASHINGTON MARKET CO., DEFENDANT. } No. 3797.

The defendant having appealed to the general term from the decision pronounced herein on the 7th day of February, 1876, in the equity court, and Thomas C. Connolly, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

WASHINGTON MARKET CO.,
By P. S. SMITH, *Clerk,*
Appellant.
THOMAS C. CONNOLLY, *Surety.*

Approved.

A. WYLIE.

287 *Decree in gen. term.—June* 12, 1876.

In the supreme court of the District of Columbia, in general term.

MONDAY, *June 12th*, 1876.

Session resumed pursuant to adjournment.
Present, Justices Wylie, Humphreys, and MacArthur.

JAMES A. HOFFMAN, COMPL'T,
vs.
THE WASHINGTON MARKET COMPANY, DEFENDANT. } 3797. Equity docket 13.

This cause came on to be heard upon the defendant's appeal from the decree of the special term of February 7, 1876, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed by the court that the said decree of the special term be and the same is hereby affirmed with costs. And from said decree the defendant here now in open court prays an appeal to the Supreme Court of the United States, and the same is allowed.

By order of the court.

Humphreys, justice, dissenting.

288 *Appeal bond to S. C. U. S.—Filed Aug.* 11, 1876.

In the supreme court of the District of Columbia, the 10th day of August, 1876.

JAMES A. HOFFMAN AND OTHERS, COMPLAINANTS,
vs.
THE WASHINGTON MARKET COMPANY, DEFENDANTS. } No. 3797. Equity docket 13.

Know all men by these presents that we, The Washington Market Company, principal, and Nehemiah G. Ordway, are bound unto the above-named James A. Hoffman and others, complainants in the above cause, in the sum of four hundred dollars, to be paid to the said James A. Hoffman and others, complainants, and to their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 10th day of August, 1876.

Whereas the above-named "The Washington Market Company," defendant, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

289 Now, therefore, the condition of this obligation is, that if the above-named "The Washington Market Company" shall prosecute its appeal to effect, and answer all damages and costs if it shall fail to

make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WASHINGTON MARKET CO.
By M. G. EMERY, *Pres't.*
MOSES KELLY, [SEAL.]
Treasurer Wash. Mar. Co.
N. G. ORDWAY, *Surety.*

Sealed and delivered in presence of—
PRESTON S. SMITH, for the three signatures.

Approved—

A. WYLIE.

Clerk's certificate.

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 30th of September, 1876.

[SEAL.] R. J. MEIGS, *Clerk.*

(Indorsement on cover:) No. 251. The Washington Market Company, appellant, vs. James A. Hoffman. Dist. of Columbia, sup. c't. Filed 14th October, 1876.

ADDITION TO RECORD 38.

1 In the Supreme Court of the United States, October term, 1879.

THE WASHINGTON MARKET COMPANY, APPELLANT, *vs.* JAMES A. HOFFMAN ET AL. } No. 38.

It is this 15th day of March, A. D. 1879, stipulated and agreed by and between the counsel of the respective parties in the above entitled cause that the following extracts from the Congressional Globe, second session Forty-first Congress, volumes 90 and 91, are embraced within the terms of the stipulation on pages 206 and 207 of the record of this cause, and may be considered part of said record under the terms of said stipulation.

Section 2 of House bill 1084 as reported and passed by the House of Representatives March 18th, 1870, contains the following:

"And the said company shall, whenever any part or parts of said buildings, stalls, stands, &c., for market purposes are ready for use or occupancy, offer the same for sale at public auction for one or more years to the highest bidder or bidders, subject to the payment of an annual rent, the amount of which to be fixed by the mayor and common council of the city of Washington and the directors of the incorporation."

And the following:

2 "The stalls, stands, and privileges of all kinds in said market to be used for market purposes, when offered at public sale, shall be let to the highest bidder, and there shall be no bidding on the part of said company, directly or indirectly; but said company, with the consent of the mayor and alderman of the city of Washington, may fix a minimum rate of bids at such sale, and the person who shall offer the highest price at or beyond such minimum for any such stand, stall, or privilege shall be entitled to the occupation thereof, and shall be considered as having the good will and the right to retain the possession thereof for the term for which the sale has been made and the rents are promptly paid; and the rents shall only be raised by consent of the mayor and the common council." (Vol. 90, pages 2070 & 2071.)

The Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 1084) to incorporate the Washington Market Company.

Mr. MORRILL, of Vermont. I suggest that only the amendments be read.

Mr. TRUMBULL. This is a House bill.

Mr. MORRILL, of Vermont. It is a House bill.

The PRESIDING OFFICER. The amendments will be read.

The Committee on Public Buildings and Grounds reported the bill with amendments. The first amendment was in section two, line forty-seven, after the word "thereof," to strike out the words—

3 **"For the term for which the sale has been made and the rents are promptly paid; and the rents shall only be raised by consent of the mayor and the common council."**

And in lieu thereof to insert:

"So long as he chooses to occupy the same for his own business and pay the rent therefor; and the rent shall only be raised on application to the mayor and common council, who, after hearing the parties, may change and determine the same."

The amendment was agreed to. (Vol. 91, page 2982.)

WILLIAM BIRNEY,
For Appellant.

R. T. MERRICK,
For Appellee.

(Indorsed:) Supreme Court U. S., 1879, October term. No. 38. The Washington Market Company, app't, vs. James A. Hoffman. Stipulation of counsel & addition to record. Filed 8 September, 1879.



In the Supreme Court of the United States.

No. 251.

THE WASHINGTON MARKET COMPANY,

Appellant,

Vs.

JAMES A. HOFFMAN *Et Al.*

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BENJ. F. BUTLER AND WILLIAM BIRNEY,

Solicitors for Appellant.

FILED OCTOBER 14, 1876.

Judd & Detweiler, Printers.

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BRIEF FOR THE MARKET COMPANY.

STATEMENT OF FACTS.

The Washington Market Company was incorporated May 30, 1870, by act of Congress.

16 Stat. at Large, 124.

The company was authorized to erect upon a certain lot belonging to the United States, market buildings with stalls. The second section of said act contains the following:

"And the said company shall, whenever any part or parts of said buildings, stalls, stands, and so forth, for market purposes, are ready for use or occupancy, offer the same for sale at public auction *for one or more years*, to the highest bidder or bidders, subject to the payment of an annual rent," &c., &c., * * * * * * * * * * * and all *subsequent sales and leases* thereof *shall be made* on on similar notice and *in the same manner.*" * * * * * * * * * * * "The stalls, stands and privileges of all kinds in said market to be used for market purposes, when offered at public sale, shall be let to the highest bidder;" * * * * * * * * * * * and the person who shall offer the highest price at or beyond such minimum for any such stand, stall, or privilege shall be entitled to the occupation thereof, and shall be considered as having the good will and the right to retain the possession therefor *so long as he chooses to occupy the same for his own business and pay therent* the refor; and the rent shall only be raised on application to the mayor and common council who, after hearing the parties, may change and determine the same.

"*Prorided, however*, That such right to the possession of such stands, or stalls, may be sold or transferred by such purchaser, under regulations to be fixed by the by-laws of said company, and, in the case of the death of any such

purchaser, during the existence of his lease, it shall be disposed of as other personal property." * * * * * * * * * * *

The real estate is vested in the market company for the term of *ninety-nine* years, or until forfeiture: *Provided*, That the city of Washington may, at the end of thirty years, buy the property on appraisal. Sec. 12.

The company was empowered to "ordain and establish such by-laws, ordinances, and regulations not inconsistent with this act, or of the laws of the United States, as may be necessary and proper for the management of the concerns of said company." 1st Section.

The business of the company was to be conducted and managed by thirteen directors chosen from among the stockholders. 3d and 4th Sections.

The original corporators having refused to accept the charter, the company was duly organized under section 15, on the 5th of November, 1870. * Record, 38.

The market buildings having been completed, the rents of the several stalls were fixed by the vote of the directors, (113,) and approved by Governor Cook, April 18th, 1872, (221.) May 23, 1872, certain regulations were established. (153.)

The second regulation provides, that:

"No person will be allowed to occupy a stall or stand until he has signed the market regulations, and has received a permit describing the character of his stall, and *the conditions of occupancy*."

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* The Record will hereafter be referred to by marginal page only.

The third (153) provides for payment of rents quarterly, in advance, and for forfeiture of stall for non-payment, and adds:

"*At the end of the term of each occupant* he shall quit and deliver up his stand peacefully, and in as good order and condition, except ordinary wear, as the same now is or may be put in by the company." (154.)

TERM OF SALE.

May 23, 1872, the Board of Directors voted to commence the sale at auction, May 25, 1872, and continue the same by adjournment until all are disposed of.

"The sales shall be of the right to occupy for two years, from July 1, 1872."

Whitney's testimony, Rec., 156.

* * * "The purchaser may take possession of his stall as soon as it is ready, upon obtaining his permit therefor," &c. (156.)

The terms of sale were announced at the opening of the sales, reiterated at each adjourned sale, and not objected to by the dealers.

Testimony of M. G. Emery, Rec., 161.
" N. G. Ordway, Rec., 166, 171.
" E. B. Lafferty, Rec., 174, 242.
" J. T. Varnell, Rec., 201.
" W. E. Chandler, Rec., 212.
" N. P. Reid, Rec., 237.

"All sales of stands, without exception, were of the right to occupy for two years, from July 1, 1872. This limit as to time was distinctly set forth in the terms of sale as adop-

ted by the directors of the plaintiff, May 23, 1872, was duly advertised in the newspapers and in posters, was publicly and clearly announced at the sale and at each adjournment, and was fully and perfectly understood by all bidders and purchasers and all dealers, (including all the defendants who bought,) purchased, and selected stands, with a knowledge that they acquired a right for two years, and no longer."

Cross Bill, admitted by demurrer, (55.)

Orig. Bill, par. 4, (1.)

Amended Bill, par. 5, (23.)

The permit which was given to each purchaser, before he entered into possession of the stall, specified the term: "*For "the term of two years, from July* 1, 1872, *paying therefor the "quarterly rent in advance*," * &c.

Rec., 8, 17, 66, 213.

The market regulations†, which were signed by each purchaser and stall occupant, and thus became a part of the contract between the parties, bound each occupant to quit and deliver up his stand peaceably "*at the end of the term.*"

Rec., 153, 154, 162, 171, 193.

There was no lease in regular form given to the purchaser.

There was no covenant under seal on his part to pay the rent for the *full term* of his holding. As a matter of fact he was left, by the form of contract, free at all times during his term to abandon his stall and thus release himself from obligation to pay the rent for the unexpired part of his term.

The construction placed by the Market Company upon

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* For full text of permit, see Rec., marginal page 16.

† For full text of market regulations, see Rec., pp. 153 and 154.

the second section of the charter was that the company would be bound to allow the purchaser to hold possession for the full term, for which the sale was made, *provided he regularly paid the rent therefor*, but that the purchaser would be bound to occupy and retain possession and pay rent *only so long as he might choose*, from month to month, or quarter to quarter, paying the rent when due.

7th par. Cross Bill, admitted by demurrer; Rec., 54.

Upon this construction, the parties adopted a permit which bound the company for the term, and not an indenture of lease which would have bound both parties for the term.

Rec., 54.

This construction was adopted without objection on the part of purchasers and governed all their business relations between themselves and between them severally and the company until June, 1874.

"The construction placed upon the charter by the Market Company and by the purchasers at auction, including the plaintiffs, that the stalls and stands were to be sold for a fixed term, and to be resold at auction at the end of the term, was never disputed by any dealer, to the knowledge of the defendant, until after May, 1874." * * *

Answer to amended bill, Rec., 41.

"The defendant claims that the contemporaneous construction of the charter was in accordance with the present claim of the defendants," * * * "and such construction was never disputed until about the time of filing the original bill in this suit."

Idem, Rec., 44.

Testimony of John T. Varnell.

" W. E. Chandler.

"That the stalls and stands were sold only for a fixed term of two years, and to be resold at auction at the end of the term, and that the rentals were legally and duly fixed, was never disputed by any dealer or defendant [to cross-bill], to the knowledge of the plaintiff, until after May, 1874."

Paragraph 8, cross-bill, admitted by demurrer.

"Dealers who had purchased at auction, when selling or transferring their rights, in accordance with the aforesaid section 2, never sold or attempted to sell them for a longer period than until July 1, 1874. Many sales of this character were made, and about thirty-three per cent. of the stalls in the market have, since the original sale at auction, changed hands on this construction of the law."

Par. 7, answer to amended bill, Rec., 42.

Many purchasers abandoned their stalls during the two years' term.

Sales and abandonments "have amounted to about fifty per cent. of all the stalls in the market."

Idem, ibid.

"About June, 1874, the market dealers for the first time advanced the claim that, under their purchases for two years, they were entitled to hold in perpetuity; and they sought to have a bill passed by Congress forbidding a resale at auction."

Par. 9, cross bill, (Rec., 55,) admitted by demurrer.

The company, claiming the right of resale, advertised to resell June 20, 1874.

June 19, 1874, the original bill in this cause was filed and the resale restrained.

Rec., 56.

June 30 and July 1, 1874, the company notified the de-

fendants to quit and deliver up the stalls and stands which they had occupied.

ABANDONMENT OF STALLS BY PLAINTIFFS.

"And on said first day of July, and while the restraining order was pending, the defendants [to cross bill] did quit said stalls and stands, and unconditionally abandoned the same and the market."

10 Cross bill, Rec., 56, admitted by demurrer.

"After the issue of the injunction of the 9th July, most of them returned and reoccupied the stalls, without right, and the plaintiff did not consent to their return in any other way than by not offering any obstacle thereto, and upon the distinct notice to them from the plaintiff that none of its legal rights, as then existing, July 9th, should be affected or considered as waived by its forbearance, but that it should have the same legal rights as if they had not returned, which condition was assented to by them."

10 Cross bill, admitted by demurrer, Rec., 56.

After their return to the stalls, July 9, 1874, nearly all the appellees refused and neglected to pay for the use and occupation of the stalls taken by them as aforesaid. At the rate of the fixed rents, the delinquencies amounted, at the date of the amended bill, to the sum of $30,637.21.

Exhibit 1 to Cross bill, Rec., 63, 64 and 65.
" to Answer, " 47, 48 and 49.

This general delinquency is charged in the 15th paragraph of the cross bill, to have been the result of "concert and combination" among the appellees; and this charge is admitted by the demurrer.

May 28, 1875, under stipulation, the appellees filed

AMENDED BILL, (Rec., 17.)

July 9, 1875, appellant filed its answer. Replication.
" " " by leave of court, filed its cross bill. (Rec., 51.)
Oct. 14, 1775, answer to cross bill filed. (Rec., 67.)
Nov. 3, 1875, exceptions filed to answer to cross bill. (72.)
Dec. 20, 1875, exceptions sustained. Leave to answer. (72.)
Jan'y 17, 1876, amended answer by Jas. A. Hoffman, alone.
Jan'y 3, 1876, all the appellees, except Hoffman and 74 others, plead to 16th paragraph of cross bill, and demur to the other paragraphs. (75.)
Jan'y 15, 1876, decree *pro confesso* against the 74 who had not answered cross bill.

MATTERS PRESENTED TO EQUITY COURT.

Winnowing out the verbiage of the bills—original, amended, and cross—and the answers, the matters presented to the special term in equity for decision were four in number:

I.—Whether each complainant had, by purchasing one or more stalls at public auction, occupying the same for his business and paying his rent according to the terms of his contract, entitled himself to ask the decision of an equity court on his claim?

II.—Whether the annual rent had been ascertained and

fixed in accordance with law and should be paid by appellees?

III.—Whether each purchaser of a stall at the public auction of 1872, for the term of two years from July 1, 1872, had the right, after the expiration of said term, to hold his stall so long as he might choose to occupy it for his own business and pay the rent therefor? In other words, did his contract for two years give him a right in perpetuity?

IV.—What relief, if any, shall be given to the Market Company under its cross bill?

THE EQUITY COURT DECREED, (Rec., 207.)

In effect, on the *first* matter, that the several complainants had rights, by purchase, in 1872, and by subsequent occupancy of stalls and payment of rent.

On the *second*, that the rental had been fixed according to law, and the complainants should each pay the rental agreed to by him.

On the *third*, that the complainants held their several stalls, by purchase, in 1872, without limitation of their rights to two years, from July 1, 1872; and

On the *fourth*, that the demurrer to the cross bill be sustained, and relief refused.

The first point is not decided in as direct a manner as the three others, but by necessary implication.

See Decree, Rec., 283.

MATTERS APPEALED BY MARKET COMPANY.

The defendant appealed on the first, third, and fourth points, namely:

1. Standing of complainants in an equity court.

2. Perpetuity of stall-rights.

3. Relief on cross bill.

This appeal was filed in due form February 18, 1876. Rec., 284.

Afterwards, bond for security for costs was filed, in compliance with order of court.

NO APPEAL BY COMPLAINANTS.

Although in the recital of facts preliminary to the appointment of receivers, made in the 3d paragraph of the decree, it is said:

"And the said Hoffman and his co-complainants having prayed an appeal from such portion of this decree as decides that they are liable for rent."

There is nothing else on the Record to show that any appeal was taken by complainants.

Defendant's appeal from part of the decree was the only one heard in general term, as is shown by the entry on their minutes.

"This cause came on to be heard upon *the defendant's appeal* from the decree of the special term of February 7, 1876."

Rec., 287.

If any appeal was prayed by complainants, it has not been prosecuted. Complainants have submitted to that part of the decree of the special term which finds that they (the defendants to the cross bill) hold their several stands and stalls claimed by them respectively, at the rate of rental agreed upon between them and the company,—

"and are, each severally for himself, bound to pay said amount so fixed and agreed upon, for the said several stalls and stands; and it is therefore ordered, adjudged and decreed, that they pay the same."

The questions of the legal mode of fixing the rent, and the obligation of appellees to pay the amounts claimed, having thus been finally disposed of by the lower court, are not before the United States Supreme Court.

QUESTIONS BEFORE THE UNITED STATES SUPREME COURT.

The questions brought here on appeal of the Market Company are only the three which were before the General Term.

They are:

I.—Has each and every complainant a good standing in court?

II.—Did each purchaser of a stall at the public auction of 1872, for the term of two years from July 1, 1872, have the right, *after the expiration of said term*, to hold his stall so long as he might choose to occupy it for his own business and pay the rent therefor?

III.—What desposition shall be made of the cross bill?

I propose to discuss these in their order.

I.

STANDING OF APPELLEES IN COURT.

The indispensable qualifications of a complainant in the amended bill are three:

1. He must have purchased his stall at the public auction of 1872;

2. He must have occupied it for his own business; and

3. He must have paid his stall rent.

See 2d Sec. of Charter.

In the amended bill each complainant affirms these qualifications for himself.

See par. 5 and 6, Rec., 23.

But the defendant *denied, in its answer, that a single complainant possessed all these qualifications.*

Who Purchased?

1. In regard to the first, it denies that seventy-four (74) of the 205 complainants purchased at the auction of 1872, and it gave the names of the 74. *

See Answer to Amended Bill (Rec., 39) and Ex. 1.

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* The 74 plaintiffs, of whom it is denied that they purchased at the public auction of 1872, are named in Exhibit one. (Rec., 47.) They are as follows:

Arnold, Theresa.
Bradley, H. J.
Bakersmith, Henry.
Bray & Co.
Brown, Sr., Wm. H.
Beach, H. L.
Botsch, L.
Berry, E. A.
Brothers, L. J.
Brown, Walter S.
Barnes, Ellen.
Beck, Jacob.

The issue on this point, being thus made up, complainants offered no testimony to support their averment. This absence of proof disposes of the right of the 74 complainants named in the note to appear in this case.

Who Occupied?

2. In regard to the second qualification—continuous occupation of stall—it is submitted that not one of the complainants in this case possesses it. Each and every one of

---

Crown, James H.
Coburn, H. C.
Chandler, Geo. T.
Coleman & Son, D. E.
Davidson, Wm. A.
Davidson, John H.
Daly, John M.
Donaldson, B. S.
Dix, Wm.
Eichhorn, Rudolph,
(as to 153.)
Emerson, Orlando.
Etchison, King.
Fitzpatrick, James.
Fry, James H.,
(as to 218 and 219.)
Faume, C.
Faume & Son, J. D.
Gheen, Enos W.
Golly, Ben.
Hoover, Wm. H.
Hoover, S. S.
Holmead, Wm.
Holstein, A. H. F.,
(as to 664.)
Huhn, Mrs. J.
Hawes, Charles W.
Jenkins, T. T.
Kuhlman, Charles F.
Kahlert, F. W.,
(as to 49 and half of 50.)
Kahlert, G.
Kengla, Jacob H.
Kramer, Andrew.
Limerick & Bro., James.
Lafontaine, James,
(as to 380 and 381.)
Mann, R. C.
Matthews, Henry.
McGee, James.
McCauley, Joseph.
Menke, M.,
(as to 171.)
Rabbitt & Crown,
(as to 605 and 606.)
Ruppert, Gustavus.
Smith, Robert.
Stewart, W. E.
Shreve, J. H. & W. O.,
(as to house No. 9.)
Shaefer, C.
Steubner, August.
Schroth, Charles,
(as to 451 and half of 452.)
Schaefer, Charles.
Skidmore, James,
(as to 334 and 335.)
Tucker, R. A.,
(as to 77, 78, and house 4.)
Thompson, R. L.,
(as to 289.)
Toliver, B.
Tompkins, Mrs.
Varnieff, George.
Whitmore, J. R.
Wooster & Adams.
Williams, C. J.
White, James.
Weaver, M. C.
Wheatley, Andrew J.
Wetzel, J. W.
Widmeyer, Mrs. John.
Warthen & Bro., R. C.
Yeabower, Chris.

them abandoned his stall, for about ten days, to the possession of the Market Company, in the first part of July, 1874.

See ante p. 7.

10th par. Cross bill, Rec., 56.

In par. 10 of answer to cross bill (Rec., 68) this is admitted in the following language:

"10. They admit that in July, 1874, they temporarily abandoned their said stalls, in consequence of the annoyances and persecutions of the plaintiff, and that they subsequently returned and reoccupied the same."

Their claim, that they had a right to return, and submitted to no conditions in doing so, does not break the force of their admission; nor do they offer any evidence of the alleged "annoyance and persecutions."

The abandonment is admitted, also, by the demurrer to the cross bill.

Rec., 74.

It is established then, that for about ten days after the close of their two years' term, each and every complainant *did not choose to occupy* the stall for his own business.

The qualification once lost could not be regained. A crowd of more than 200 men could easily retake physical possession of the market stalls, but they could not mend the broken chain of legal right.

The unexplained act was a surrender.

Who paid Rent?

3. In regard to the third qualification,—payment of stall rent,—the Record, (see Exhibit 1 to answer to amended

bill and to cross bill; also testimony, Rec., 245, and demurrers to cross bill,) shows:

First. That 19 of the complainants, whose names* are given, had not paid the rent up to July 1, 1874, the end of the two years' term.

Second. That 195 of the complainants had not paid the rent falling due between July 1, 1874, and May 28, 1875, the date of filing the amended bill.†

Third. That the 19 complainants who were delinquent for rent prior to July 1, 1874, were also delinquent after that date.

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* The following were delinquent for rent before July 1, 1874:

Augustifer, Frank J.
Bakersmith, Henry.
Cissel, Thomas F.
Carll, George.
Emerson, Orlando.
Hoffman, James A.
Hammond, John.
Hunt, B. F.
King, R. F.
Kelley, John R.
Lancaster, E. F.
Kinkins, Wm.
Lafontaine, James.
Murray, A.
Miller, Thomas J.
Stewart, W. R.
Stewart, W. E.
Tucker, R. A.
Turner, Wm.

† This leaves only ten who had a clear record for payment of rent. Five of them were not purchasers at the auction 1872. Their names, as shown by the Exhibit and testimony, are:

Bray & Co.,
Berry, E. A.
Chandler, Geo. T., } not purchasers at the auction of 1872.
Hawes, Chas. W.
Toliver, B.

Fearson, J. C.,
Fearson, E. D.,
Harrington, Dennis, } purchasers.
Lavender & Son, James,
Mueller & Son, Carl,

Leis & Roth are in the list of complainants, but no stalls are claimed for them in the amended bill or elsewhere.

Fourth. That of the *ten* who were not delinquent for rent, either before or after July 1, 1874, only *five* were purchasers of stall rights at the public auction of 1872.

These five were:

J. C. Fearson,
C. D. Fearson,
Dennis Harrington,
James Lavender & Son,
Carl Mueller & Son.

The other five non-delinquents are proved not to have been purchasers at the auction of 1872. (See Exhibits 1, and testimony as cited.)

Their names are:

Bray & Co.,
E. A. Berry,
Geo. T. Chandler,
Chas. W. Hawes,
B. Toliver.

On these facts it is submitted:

a. That because of the abandonment of stalls by appellees, in July, 1874, not one of the appellees has any standing in court; or—

b. If the court shall find that said voluntary abandonment did not destroy the standing of appellees, then, that, because of non-purchase by 74, at the auction of 1872, and subsequent non-payment of rent by 195, two hundred of the complainants have no standing in court. The five who have a clear record as to purchase and payment of rent,

are: *J. C. Fearson, C. D. Fearson, Dennis Harrington, James Lavender & Son,* and *Carl Mueller & Son.*

But these abandoned, and, in common with all the other appellees, are estopped by their own acts from setting up any claim under the charter.

STANDING LOST BY ESTOPPEL *in pais.*

The purchasers at the auction of 1872 *are estopped by their contracts and acts from setting up a claim in perpetuity.*

The advertisement was for a sale for two years.

The auction was for a term of two years.

The purchasers bid for two years; they signed the regulation that they would quit at the end of two years; and they occupied and paid rent for two years, every one of them, under the following permit:

Permit. Stand No. —.

WASHINGTON MARKET COMPANY.

—— —— is hereby entitled to occupy stand No. —, in the buildings of the Washington Market Company, as a ——————, FOR THE TERM OF TWO YEARS FROM JULY 1ST, 1872, paying therefor the quarterly rent, in advance, of —— dollars; subject to the conditions of the charter and by-laws of the company, and the regulations of the company as from time to time established.

This permit will be of no effect until the holder has signed the regulations and paid all arrearages due the company, and it is transferable only in writing and upon a surrender hereof.

WASHINGTON MARKET COMPANY,
By M. G. EMERY,
President.

Dated ——, 1872.

It is possible that if they had got into possession without any contract, or provision for one in the charter, they might have set up their present claim; but did they not establish a binding construction of their statutory rights when they chose to get possession of the stalls under these contracts alone?

Do they not come within the very definition of estoppel by acts *in pais*, which obtains when one party procures a right, privilege, or grant, from another by contract.

In such case he is *estopped* to claim any other and different right, privilege, or grant. Is not that principle of law of universal application?

I may lease my own land of a stranger to the title, and become his tenant and take possession under his lease. Can I, during that tenancy, turn round and set up my title to the premises until I have surrendered possession to my landlord, even if I in fact own the estate in fee?

When a person has been let into possession by a lessor or those under whom he claims, the lessee is estopped from disputing the title. That a person coming into possession of land under the agreement or license of another cannot be permitted to deny the title of the latter, is *universal.* Even if he had a valid title at the time he is deemed to have waived it.

Blake *vs.* Foster, 8 Term R., 487.
Hodson *vs.* Sharp, 10 East. R., 335.
Phillips *vs.* Pierce, 5 Barn. & Cres., 433.

"Equitable estoppels are always applicable in cases where an attempt is made to assert a right subsequently,

to the injury of others, which was waived by acquiescence at the time."

89 N. H. R., 219.

"Admissions, whether of law or of fact, which have been acted upon by others, are conclusive against the party making them in all cases between him and the person whose conduct he has influenced. It makes no difference in the operation, in this particular, whether the thing be true or false, it being a fact that when acted upon renders it conclusive."

Coleman *vs.* McClure, 47 Barb., 206.

"No man can adopt that part of a transaction that is favorable to him and reject the rest, to the injury of those from whom he derives benefit."

Johnson *vs.* Fritz, 44 Penn., 472.

Bocock *vs.* Pavey, 8 Ohio St., 270.

"A tenant who makes an agreement with his landlord for a limited period, thereby acknowledging his right to the premises, is estopped to dispute his landlord's title under an outstanding title held by himself for a longer period, of which the landlord had not notice."

Herman's Law of Estoppel, p. 365.

"A tenant cannot set up a title adverse to the lessor's either in himself or a third party inconsistent with the *lessor's rights to grant the original lease.*"

Plummer *vs.* Plummer, 30 N. H., 558.

Johnson *vs.* Whedon, 15 N. Y., 141.

"The relation of landlord and tenant must be dissolved and possession restored, or an equivalent effected by the tenant before he can set up another title."

McCurdy *vs.* Smith, 35 Penn., 108.

"A mistake as to the law forms no ground for reforming a contract; yet where a party is acting under a mistake of law and fact he does acts which mislead an adverse party as well as if he were not acting under such mistake."

So that *quacunque via data* whether under the statute or under the contract, will a court of equity give to these parties, as against their written contract, that which was not meant to be sold to them; was not sold to them in fact; that which they did not mean to purchase and did not purchase, in fact? Is not the claim so clearly inequitable and unjust that no consideration will impel a court of equity to set it up? Is there not such want of mutuality in the transaction as it is now claimed to be, that even viewed in the interests of the market dealers it cannot be supported?

II.

TERM OF HOLDING.

Is the purchaser of a two years' term, at the auction sale of stalls in 1872, *entitled to hold in perpetuity?*

This is the pivotal point of the controversy in this case. Its decision depends upon the interpretation of section 2 of the charter of the Washington Market Company. There are two widely differing theories of the meaning of that section:

THE THEORY OF DEALERS, SINCE JUNE, 1874.

The dealers claim that the effect of section 2, and of the sale for two years under it, was to create:

(1.) A mutual contract or lease, binding both parties absolutely for two years, the dealer being bound to pay rent for that period whether he occupied or not, with—

(2.) A unilateral contract or privilege after two years, under which the dealer had the right to continue in possession, if he chose, indefinitely or perpetually after the two years, so long as he paid rent, but with the right to quit whenever he chose.

THE COMPANY'S THEORY.

That the sale for two years bound the company absolutely for two years only.

That the sale did not bind the dealer to stay or to pay rent during the two years or any part thereof; that he might quit at any time he chose during said two years, paying the fixed rental for the time of his occupancy only;

And that he had no right to hold beyond the term of two years, under his purchase for that term.

STATUTE TO BE CONSTRUED.

The charter provisions which are to be construed are in effect the following:

1. That the stalls shall be sold "AT PUBLIC AUCTION FOR ONE OR MORE YEARS." (Sec. 2.)

2. That "ALL SUBSEQUENT SALES AND LEASES THEREOF SHALL BE MADE" * * * "IN THE SAME MANNER." (Sec. 2.)

3. That the highest bidder "shall be considered as having the good will and *the right to retain the possession thereof so long as he chooses to occupy the same for his own business and pay the rent therefor.*" (Sec. 2.)

4. That such right to the possession of such stands may be sold and transferred by such purchaser, under regulations to be fixed by the company, "and, in the case of the death of any such purchaser, DURING THE EXISTENCE OF HIS LEASE, it shall be disposed of as other personal property." (Sec. 2.)

5. That, after thirty years from date of charter, Congress may authorize the corporation of Washington, on its request, to take possession of the market buildings and grounds, on certain conditions.

CONSTRUCTION.

FIRST POINT.

The company's theory harmonizes all the five above stated provisions, giving a sensible and intelligent effect to every clause, sentence and word.

It recognizes the statutory power of the company to make the first auction sale, and all subsequent ones, for such a term of years as it may think expedient, controlled, however, by the right of purchase reserved to Washington City; it admits the right of the purchaser to occupy only so long as he chooses to do so and pay rent; and, in case of his death, *during the existence of his lease*, it admits the right of his administrator to the unexpired term. No violence is done to the meaning of any clause in the charter; but full

force and effect is given to each. The third provision, if it stood alone and unqualified by the other four, might bear a different meaning; but the meaning given it is not forced, and is the only one consistent with the clear and precise language of the other four. This rule of interpretation is stated in the following authorities:

"A statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant."

Bac. Abridg. Stat., I, 2.

"The great fundamental rule in construing statutes is to ascertain the intention of the legislature; and to attain this object, every part of a statute must be viewed in connection with the whole, so as to *make all the parts harmonize if practicable*, and *to give a sensible and intelligent effect to each*; and then, so to construe it as to accomplish the end which the legislature had in view, and not so as to defeat it."

State *vs.* Blair, 32 Ind., 313.

Ogden *vs.* Story, 2 Paine's C. C., 584.

State *vs.* King, 44 Mo., 283.

George *vs.* Bd. of Ed., 33 Ga., 344.

Horton *vs.* Mobile, S. C., 43 Ala., 598.

Bingham *vs.* Supero, 8 Minn., 441.

Jersey Co. *vs.* Davison, 5 Dutch, 415.

Watero. T. Co. *vs.* McKean, 6 Hill, 616, 619.

Shrewsbury *vs.* Boylston, 1 Pick., 105.

Simonds *vs.* Powers, 28 Ver., 354.

Ingraham *vs.* Speed, 30 Miss., 410.

Staniels *vs.* Raymond, 4 Cush., 314.

See also Sedg. on Stat. & Con. Law, 238.

Dwarris on Stat., 128, 144.

Vattel's Rules, 19.

American Rules, 5, 12.

Smith on Stat. Construction, sections 527 and 575.

Gates *vs.* Salmon, 35 Cal., 576.

Lacey *vs.* Moore, 6 Cold., 348.

Leversee *vs.* Reynolds, 13 Iowa, 310.

34 Miss., 572.

31 Ala., 227.

6 Ind., 354.

1 How., 285.

"Where the meaning of a statute is doubtful and ambiguous, where the clauses are confused and contradictory, and the word such as to admit of two senses, the court will adopt that construction which will best carry into effect the just and reasonable intention of the legislature. And if any part of a statute is intricate, obscure, or doubtful, the true way to discover the intent *is to consider the other parts of the act;* for the words and meaning of one part of a statute frequently lead to the sense of another; and, in the construction of one part of a statute, *every other part is to be taken into consideration.*"

1 Br. & Had. C., 72, note; cites 4 Md., 335.

James *vs.* Dubois, 1 Harr., 285.

U. S. *vs.* Freeman, 3 Howard, 556, 565.

SECOND POINT.

The dealers' theory expunges four of the five above-stated charter provisions.

It makes the first sale for a term of years meaningless;

And all "subsequent sales and leases" impracticable.

It destroys the right of purchase, in 1900, by the Corporation of Washington;

And it annuls the limitation of descent to "the existence of the lease," as provided in the charter—extending it to perpetuity.

We deny that any precedent of authority can be found in which a court rejected *four* parts of a statute, in order that *one* might stand; if it was possible to construe the statute so that all parts of it might stand.

We cite the following:

"It was long since resolved, (Edrich's case, 5 Rep., 118,) that judges ought not to make any construction against the express letter of a statute; for nothing can so exhibit the meaning of the makers of an act as their own direct words—*index animi sermo*. 'And it would be dangerous to give scope to make a construction in any case against the express words when the meaning of the makers doth not appear to the contrary, and when no inconvenience will thereupon follow; and, therefore, in such cases, *a verbis legis non est recedendum*."

1 Broom & Hadley C., p. 71.

"One part of a statute must be so construed by another that the whole may (if possible) stand."

1 B. & H., 71.

"A statute must be so construed as to give effect, if possible, to every portion of it, and without rejecting any part as surplusage, or treating it as a repetition of a provision already made."

Same cites:

Gates *vs.* Salmon, 35 Cal., 576.
Lacey *vs.* Moore, 6 Coldw., (Tenn.,) 348.
Leversee *vs.* Reynolds, 13 Iowa, 310.
Ellison *vs.* Mobile, etc., R. R. Co., 35 Miss., 572.
Brooks *vs.* Mobile, S. C., 31 Ala., 227.
People *vs.* Burns, 5 Mich., 114.
Board, &c., *vs.* Cutter, 6 Ind., 354.
James *vs.* Dubois, 1 Harr., 285.

In *Magruder & Tuck* vs. *Carroll et al.*, (1853,) the court of appeals of Maryland determined the accentuation, punctuation and meaning of the first section of the statute, by giving force to the second section, refusing to reject the second section, in order to give to the first section the meaning suggested by the collocation of the words. The court said:

"It is a well recognized canon of interpretation, that if any part of a statute be intricate, obscure or doubtful, the proper way to discover the intent is to consider the other parts of the act; for the words and meaning of one part of a statute frequently lead to the sense of another, and in the construction of part of a statute every other part ought to be taken into consideration." (Dwarris on Stat., 697.) * * *

"To avoid such results, (confusion and uncertainty,) the second section would have to be expunged from the act, *and this we have no power to do.*"

4 Md. Rep., 348–9.

THIRD POINT.

If the literal meaning of the third provision is inconsistent with the language of the other four, the court will restrain the meaning within narrower limits.

The phrase "*so long as he chooses to occupy the same for his own business and pay the rent therefor*, if taken literally, overrides not only the right of the company to sell for a term of years, and to have its property again at the expiration of the lease, but the right of Washington City to purchase, and also the right of the United States to repeal the charter or to have the property at the expiration of the charter term!! It is absurd to attribute such an intention to Congress; the court must interpose the limitations required by the sense and the objects of the enactment.

"What is implied in a statute, pleading, contract or will is as much a part of it as what is expressed. (2 Paine's Rep., 251;) *Koning* vs. *Bayard*, (3 Wend., 258;) Haight *vs.* Holley, (10 Wend., 218;) Rogers *vs.* Kneland, (20 Wend., 218;) Fox *vs.* Phelps, (Comyn's Dig., Title Devise, 12.)

"A thing within the intention of the makers of the statute is as much within the statute as if it were within the letter."

Zouch *vs.* Stowell, (Plow., 366.)

U. S. *vs.* Freeman, (3 How., 565.)

See *U. S.* vs. *Babbitt*, 1 Black, 61. Re-affirmed in U. S. *vs.* Hodson, 10 Wall., 406.

"Upon general principles of interpretation, where the words are general, the court are not at liberty to insert limitations not called for by the sense, or the objects, or the mischiefs of the enactment."

U. S. *vs.* Coombs, 12 Peters, 79.

"It is undoubtedly the duty of the court to ascertain the meaning of the legislature from words used in the statute, and the subject-matter to which it relates; and to restrain its operation within narrower limits than its words import, if the court are satisfied that the literal meaning of its language would extend to cases which the legislature never designed to include in it."

Lessee of Brewer vs. *Blougher*, 14 Peters, p. 178.

"However broad some of its expressions may be, yet if, on such examination, it shall clearly appear that they were intended to be limited by other provisions of the same act, it is not improper to restrain them accordingly."

Smith on Const. Con., 764.

The Sloop Elizabeth, 1 Paine C. C., 11.

"If each clause cannot have the same *entire* effect when taken in connection with the others, that it would have if taken singly, they must be construed so as to give effect to

what appears to have been the main intent of the legislature."

Smith on Stat. Cons., Sects. 641 and 649.
Holbrook *vs.* Holbrook, 1 Pick., 250.

FOURTH POINT.

The third provision should be construed strictly, and not extended.

Under any construction, a provision that bound the Market Company for a term of years, and allowed the tenant to dissolve the contract at pleasure during the term, was in derogation of the common law.

It is right to give the purchaser the benefit of the provision in its obvious sense; it would be monstrous to give him, in disregard of the other parts of the charter, a perpetuity, when he bought and paid for a term of two years only!

"Statutes in derogation of the common law are not extended by an equitable construction."

Rue *vs.* Alter, 5 Denio, 119.
Allen *vs.* Cook, 26 Barb., 374.
Smith *vs.* Brackett, 36 Barb., 571.
Sharp *vs.* Speir, 4 Hill, 76.
Cruger *vs.* Dougherty, 43 N. Y., 107, 122.
Wilbur *vs.* Crane, 13 Pick., 284.

At common law the Market Company, in the absence of charter restrictions, would have had the right to lease its stalls for any term of years it might choose; and a purchaser would have had the right to contract for any term.

Will the court abandon a plain and conceded interpretation, and adopt one which wrests from the Market Company a term of 97 years, which it never intended to sell; and invests with it a man who never intended or agreed to buy it, and who, for nearly two years after the contract, never claimed to have bought it?

FIFTH POINT.

The specific grant to the company of the power to sell, for a term of one or more years, should not give way to the indefinite language of the third provision.

Authorities:

"Where a particular thing is given or limited in the preceding part of a statute, this shall not be taken away or altered by any subsequent general words of the same statute."

Smith on Stat. Con., secs. 653, 651, 652.

"A thing given in particular words shall not be taken away by general words."

Sedg. Stat., 423.

Bac. Abr. Stat., I, 2.

Standon *vs.* University of Oxford, 1 Jon., 26.

SIXTH POINT.

The dealers' theory involves sundry absurdities and inconveniences.

(*a.*) It is absurd that the Market Company could only sell for a term of two years, and purchasers could only buy in perpetuity.

(*b.*) It is absurd that the company should, for a price adequate for two years only, be stripped of its property for 97 years in addition.

(*c.*) It is absurd that when the company holds for 99 years only, subject to be bought out in 30 years, purchasers from it should gain a right "in perpetuity."

(*d.*) If it is conceded that the purchaser's right does not override the 30 years' provision and the 99 years' limitation, then it is absurd to construe it as overriding the three clauses relating to sale or to tenure for a term of years.

(*e.*) It is absurd to hold that the clause providing for "subsequent sales and leases," for a term of years, has effect given to it when there is an injunction against all subsequent sales and leases for a term of years.

(*f.*) It is absurd to hold that the clause giving the purchaser the right to retain the stall so long as he chooses to occupy and pay rent, must be construed in harmony with other clauses, *during the term of years*, but that it overrides and annuls those very clauses as soon as the term has expired.

(*g.*) It would have been vastly inconvenient if the dealers' theory had prevailed in 1872. To illustrate this, let us suppose the company had sold for a term of thirty years. On the theory named, every purchaser would have been bound to pay rent for thirty years whether he occupied the stalls or not. Suppose he had bought three butcher-stalls, at a yearly rent of $484; at the end of the first year he dies, leaving no one able or disposed to continue the busi-

ness; his estate is liable for twenty-nine years, $484 each year. On the company's theory, the administrator, if he could not sell the unexpired term, could surrender it and escape further rent.

SEVENTH POINT.

The "legislative history" (as it is called by appellees) of the charter favors the Market Company's theory.

This aid to interpretation was introduced into this case by appellees. (Amended bill, Rec., 24, 25, 30, 31 and 32.) They have filed as exhibits:

(*a.*) A paper showing amendments made to a bill introduced into the Senate, 40th Congress, January 11, 1869, but never passed; and

(*b.*) A paper showing amendments made, in April, 1870, (41st Congress,) on report of the Senate committee, to the present charter.

They have obtained a stipulation from us (Rec., 282) that not only these but—

"The legislative history of the bill to incorporate said Market Company, as contained in vols. 90 and 91, 2d session, 41st Congress, Congressional Globe, shall be considered in evidence, SO FAR AS COMPETENT."

We do not consider the Globe Debates or the amendments to either bill as competent evidence to control, qualify, explain or give construction to the section.

"The court in construing an act of incorporation will not look to what occurred when it was on its passage through

the legislature. Such evidence is not only valueless, but delusive and dangerous."

Bank of Penn. *vs.* Commonwealth, 19 Penn., (7 Harris,) 144.

Sedg. Stat., 241.

See note to Sedg. Stat., 382, as to the futility of examining amendments to a bill in the different branches of the legislature.

The intention of the legislature must be found only in the statute itself.

Sedg. Stat., 243.

"No extrinsic fact prior to the passage of a bill, which is not itself a rule of law or an act of legislation, can be inquired into or in any way taken into view."

Sedg. Stat., 247, 258.

"The means of ascertaining that intention are to be found in the statute itself, taken as a whole, and with all its parts, in statutes on the same subject, antecedent jurisprudence and legislation, contemporaneous and more recent exposition, judicial construction and usage; and to the use of these means, and these alone, the judiciary is confined. No other extrinsic facts are in any way to be taken into consideration."

Sedg. Stat., 379.

Smith on Stat. and Const., 751, § 636.

"The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself, and we must gather their intention from the language there used."

Aldridge *vs.* Williams, 3 How., 24.

"The act itself speaks the will of Congress, and this is to be ascertained from the *language used*."

U. P. R. R. *vs.* U. S., Oct. T., 1875, Mr. Justice Davis.

This case illustrates the vice (so well elucidated in the authorities cited) of undertaking to tell what an act means by the amendments proposed and adopted or rejected.

How does the plaintiff know what the legislature meant? To be sure they struck out the words "for the term," &c., but did they strike them out because they objected to a term, when they left in and untouched the other clear, distinct, and positive provisions for a "term of years," and an estate for the purchaser to continue "during the existence of his lease," or did they strike them out because tautological and unnecessary, the intention to have a fixed term being explicitly and sufficiently expressed elsewhere?

Legislative history is full of cases where some legislators vote for an amendment to a bill because they desire to change its character, and others allow it to pass, or vote for it, because opposition might delay or defeat the bill, and they believe the amendment does not change its character; of cases where some legislators vote against an amendment because they desire to prevent the effect proposed in the amendment, and others vote against it because they believe the bill as it stands will produce that effect, and the amendment is unnecessary.

In this case, as in all others, the court will be at once at sea if it should seek to discover what the legislature meant in striking out part of the bill and inserting other clauses. The fact probably is that very few of the members specifically considered what legal effect was produced by the amendment; but the court cannot therefore undertake to surmise or take proof as to what the proposer of the amendment intended. The legal presumption probably is that all

the members are presumed to have understood and contemplated what they were doing. Even if so, nothing follows favorable to the plaintiffs' construction, for while possibly some of the members may have thought that by amending they changed the limited term to a perpetual right, others may have thought that, whatever the mover intended, the amendment did not accomplish that result, because it still left in the express and particular words fixing a term of years, which could not be nullified by words so general as "so long as he chooses," while the whole may have thought that as the bill stood it gave the company the right to sell for a very long time, and bind the dealers to hold for that long time, whether they could do so profitably or not, and so determined to insert a clause that they should stay as long as they chose, and only as long as they chose, whatever the term might be.

This latter we submit is the most reasonable conclusion, whether the court does or does not look at the legislative history of the bill, and does or does not confine itself, as required by the authorities, to the LANGUAGE OF THE ACT ITSELF, AS ALONE CONTAINING THE EXPRESSED WILL OF THE LEGISLATURE.

THE CONGRESSIONAL GLOBE.

The Globe reports of debates in the Senate are flagrantly incompetent. We pass them without notice.

THE BILL OF 1869.

This bill did not pass. It was not presented at the instance of the individuals who compose the present Market Company, nor had they any knowledge of it before or after

its presentation. They were not bound to look to its history before they accepted the act of May, 1870.

This bill, both as presented and amended, differed in many points from the present charter.

In regard to the terms of tenure, the provisions of the bill as presented were:

(1.) Sale at public auction for one or more years to the highest bidder.

(2.) All subsequent sales and leases thereof to be made in the same manner.

Under these, the purchaser—or, in case of his death, his estate—would have been bound for the rent during the entire term for which he purchased. It was amended by inserting:

(3.) The highest bidder shall be entitled to the occupation thereof "*so long as he chooses to occupy the same for his own business, and shall continue to pay the rent therefor.*"

The effect was that the sale was made for a term of years, and the buyer was not bound to occupy for the whole term, but only so long as he chose. This was in his favor; but the proviso that he should continue to pay the rent was for the protection of the company.

If there had been any intention in the Senate to annul the principle of auction sale for a term of years, the two clauses establishing that principle would have been stricken out.

The amendments to the bill which became a law are the only ones which, we presume, the court would, under any circumstances, look to as throwing light upon the intent of Congress. In the case of Blake *vs.* National Bank, (23 Wallace, 307,) where the language of the statute was badly expressed and apparently contradictory, and not to be harmonized by the ordinary rules of interpretation, the court consulted the amendment made in the Senate. This precedent would not justify looking to the amendments of the Market Company's charter; for, as we have shown, the provisions of the charter are easily harmonized; it is only necessary to restrain the right of choice of the stall-purchaser *within the term for which he has purchased*, under the sale ordered by the charter.

If the court think proper, however, to extend its rule so as to consider these amendments, they strengthen our case.

So far as the point in controversy is affected, the bill and act were substantially as follows:

BILL AS IT PASSED THE HOUSE.	BILL AS AMENDED IN SENATE.
1. Stalls to be sold at public auction *for one or more years.*	1. Stalls to be sold at public auction *for one or more years.*
2. All subsequent sales and leases of stalls to be at public auction *for one or more years.*	2. All subsequent sales and leases of stalls to be at public auction *for one or more years.*
3. The highest bidder to "be entitled to the occupation thereof, and shall be considered as having the good will and the right to retain the possession thereof [for the term for which the sale has been made and the rents are promptly paid.]"	3. The highest bidder to be "entitled to the occupation thereof, and shall be considered as having the good will and the right to retain the possession thereof [*so long as he chooses to occupy the same for his own business and pay the rent therefor.*]"
4. "In case of the death of any such purchaser *during the existence of his lease*, it shall be disposed of as other personal property."	4. "In case of the death of any such purchaser *during the existence of his lease*, it shall be disposed of as other personal property."
5. Washington City right of purchase, after 30 years, reserved.	5. Washington City right of purchase, after 30 years, reserved.

The provisions are identical except the parts of the third which are marked with brackets.

The Senate, on the report of its committee, deliberately adopted three different clauses engrafting upon the bill the sale for a term of years, and the purchase for a term of years. It legislated specifically as to the descent of the stall-right, if the purchaser should die "*during the existence of his lease.*" Why did it not legislate as to the descent of the *estate in perpetuity*, which, it is now claimed, the Senate intended to give to the purchaser, gratuitously, after the expiration of his contract? Because, if an answer may be made here, this "estate in perpetuity" is an idea which had no existence until it was conceived in June, 1874, by ingenious counsel.

As provision 3 passed the House, although in form it aimed to define the rights of the purchaser, it gave him none. Without that provision (3) he would have had the right to occupy for his term of purchase, if he paid his rent. The legal effect of it was to enable the Market Company:

1st. To collect its rent for the entire term of lease.

2d. To eject the tenant on failure to pay promptly.

This second power was a necessary one in business, and it was not taken away in the amendment.

But to the first power, there were obvious and insuperable objections, arising in the interest both of the purchasers and the company.

While the company had the right to fix the length of

term, few purchasers would be willing to bind themselves, and, in the case of death, their estates, to pay rent for a term of five, ten, fifteen, or thirty years, without regard to changes in business, death, or sickness; and it was not the interest of the company to make sales coupled with a condition so onerous.

It is probable, therefore, that both parties agreed to the amendment which made the termination of occupancy and payment of rent depend wholly on the choice of the purchaser. He might cease to occupy and to pay rent whenever he chose, and the Market Company could not collect rent for the entire term of lease if the purchaser elected to quit the stall.

This is the plain meaning of the amendment, and it has no other; it was so understood by all parties at the time, and for two years afterwards; it gave the form of permits to the contracts, and entered into all sales and assignments of stall-rights.

THE ARGUMENT FOR APPELLEES, on this "legislative history," appears to be based upon the fact that the words "for the term for which the sale has been made," were stricken out by the amendment. Their inference is that the principle of sale for a term was stricken out of the charter.

The easy answer is that this principle was recognized expressly in three other clauses, and, by implication, in a fourth—and that none of these were dropped from the bill. It is clear, therefore, that Congress intended to do the only other thing the words can mean—retain the contracts for a term of years, but enable the purchaser to choose, during

the term, between occupying and paying rent, on the one hand, and quitting and ceasing to pay rent on the other.

EIGHTH POINT.

The contemporaneous construction sustains the theory of the Market Company.

The rule *contemporanea expositio est optima et fortissima in lege*, applies in the construction of statutes.

Bac. Abr. Stat., I, 5.

Broom's Leg. Max., 300.

Smith on Stat. Cons., 660, 740, § 620 *et seq*; § 624.

Phila. & Erie R. R. *vs.* Catawissa R. R., 53 Penn., 20.

Warfield's Will, 22 Cal., 61.

Broom & Hadley's Commentaries, 70, 71, note 38.

Att'y Gen. *vs.* Bank of Cape Fear, 5 Ire. Eq., 71.

Union Ins. Co. *vs.* Hoge, 21 How., 66.

Rogers *vs.* Goodwin, 2 Mass., 475.

Packard *vs.* Richardson, 17 Mass., 122.

Opinion of Judges, 3 Pick., 517.

Stuart *vs.* Laird, 1 Cr., 309.

McKeen *vs.* Delancy's Lessee, 5 Cr., 309.

Cooley on Cons. Lim., 67.

"In the construction of a doubtful law, the contemporaneous construction of persons appointed to execute it is entitled to great respect."

Edward's Lessee *vs.* Derby, 12 Wheat., 210.

United States *vs.* The Recorder, 1 Bl. C. C., 218.

United States *vs.* Dickson, 15 Pet., 141.

7 Opin. Att'y Gen., 299.

Ibid., 691.

"The construction given to an act of the legislature soon after its passage cannot be altered at a very distant period."

Graham's Appeal, 1 Dallas, 136.

As contradicting the contemporaneous construction of the charter by the sale and occupancy for two years, without setting up the present claim, the plaintiffs allege an oral remark by Mr. A. R. Shepherd, (Amended bill, page 27,) on December 20, 1870, that the dealers would have "vested rights in the stalls in the new market-house, which would belong to them for all time to come."

In reply, the company alleges (page 44) and proves:

(1.) That no such remark was made by Mr. Shepherd, none of the five or six market directors who were present at the meeting, which was held on a different subject, having heard it, or having ever heard it subsequently alluded to.

(2.) That neither the company nor any of its directors had considered or decided that question, or ever gave any authority to Mr. Shepherd or any one to make any such statement.

(3.) That the alleged remark of December 20, 1870, was one and a half year prior to the sale of stalls and to the contract now being construed, and three and one-half years prior to any after allusion to the remark or any claim that it intended to give a permanent right of occupancy, during which time temporary sheds were built, occupied by the dealers, and rent paid, permanent market buildings con.

structed, the stalls sold for two years, contracts made and accepted by the dealers, and rent paid thereunder.

Testimony of T. C. Connolly, 247.
N. G. Ordway, 256, 263.
W. E. Chandler, 270, 271.
Adolf Cluss, 277, 278.
S. S. Smoot, 278, 279.

Under these circumstances, to undertake to contradict or construe the express contracts of 1872 by a remark, incidental and unauthorized, if made, of one director of the company, December 20, 1870, as to what he thought the company intended to do when they should sell the stalls in buildings not then commenced, would be in the highest degree unreasonable.

III.

THE CROSS BILL.

The judgment sustaining the demurrer to cross bill should be overruled, the cross bill sustained, and further proceedings allowed under it in the inferior court.

It was a part of the original suit; was taken *pro confesso* against a large number (74) of the defendants; and was sustained by the court below in one of its more important parts, (paragraph 16,) where it sought to have judgment against the defendants for rent.

How, then, could a demurrer be sustained to the other parts of the cross bill, which seek to have all the rights between the defendants therein and the Market Company

determined and adjudged in pursuance of the very stipulation under which the original bill was amended?

See Rec., top page 17.

The cross bill was necessary in order that a receiver might be appointed *pendente lite*, and receivers were appointed by the court below.

The cross bill thus became and remains a necessary part of this litigation, and is sustained on authority?

1. The cross bill is properly filed to obtain a complete determination of all matters in litigation between the parties, which cannot be had upon a simple decree dismissing the bill in the original suit.

A cross bill will lie to obtain "full relief to all parties in reference to the matters of the original bill."

Dan. Chan. Pr., 1742; Perk., 1st ed., 1805, 3d ed., 1549.

Story Eq. Pl., § 389; Perk., 1st ed., 1549.

It will lie "where a decree on the plaintiff's bill will not determine the litigation."

Ad. Eq., 402, p. 767, with American notes.

"It seems that a cross-bill is always necessary when the "defendant is entitled to some positive relief, beyond what "the scope of the plaintiff's suit will afford him."

Dan. Ch. Pr., 1744; Perkin's 1st ed., p. 1807.

Pattison *vs.* Hill, 9 Cowen, 747.

"As a cross-bill is a proceeding necessary to procure a "complete determination of a matter already in litigation "in equity, the plaintiff is not obliged to show any ground

"of equity to support the jurisdiction of the court. 'He "who seeks equity must do equity.'"

Dan. Ch. Pr., 1746; Perkin's 1st ed., 1809.

Cartwright *vs.* Clark, 4 Met., 104.

Ad. Eq. Pl., § 403.

Story Eq. Pl., § 399; 8th ed., p. 769.

The facts in this case clearly show the necessity for a cross bill to obtain full relief to the Market Company.

The company, owning a market building, with stalls and stands therein, sold the rights to occupy the same for two years, from July 1, 1872, at public auction, realizing $60,000 therefor; and the defendants, over two hundred in number, claim to have severally and separately purchased and entered into occupancy of a large number of the stalls and stands, which they still retain.

Towards the close of the two years' term the company prepared and advertised to sell all rights to occupy its stalls and stands at auction, for a further term of three years.

This proposed sale the defendants, combining for that purpose, have prevented by their injunctions in the original bill, wherein they claim a perpetual right of occupancy; and have already delayed such sale for more than one year, with a certainty of further delay for at least another year, and possibly even more.

In case the final decision shall be against the dealers' claim, the original bill will be dismissed, and the company can proceed with the sale for another term of years.

But it cannot sell at auction the right to occupy during past time, namely, from July 1, 1874, for nearly five years during which the sale has been wrongfully pre-

vented by the defendants. Its only remedy for its injuries and losses during this period must be directly against the defendants.

It may collect from them by actions at law, as damages, the value of the use and occupation of the stalls, which they are bound, in any event, to pay, and which may be appropriately measured by the rent previously paid and interest thereon.

But how, in assessing damages, shall it be determined what the rights to occupy, paying rent, would have brought at auction, if the sale had not been wrongfully delayed and prevented by the defendants?

They can only be well determined by a court in equity, by that court which has all the case before it; and for the fixing and collection of these uncertain damages, as well as for the collection of compensation for use and occupation, the court will retain the original bill, and will allow the company to maintain its cross bill.

In other words, the dealers claim a perpetual right to occupy, paying rent; and have prevented since July 1, 1874, and still prevent, the company from repossessing itself of its stalls, or selling at auction the rights to occupy.

If their claim is not well founded, but their terms legally ended July 1, 1874, they are bound—

(1.) To pay for their use and occupation since July 1, 1874, such sum as may be determined;

(2.) To pay as further damages for wrongfully remaining in possession after July 1, 1874, and for their false and wrongful suit, at least whatever loss the company may have

sustained by the prevention and delay after that date of the sale of the rights to occupy.

Both these obligations the company is entitled to have enforced by this court on cross bill, because

(1.) The dealers having sought equity, and being now in court on their own motion, must do equity; and

(2.) A decree to this effect is necessary to full relief, and an equitable determination of all the rights of the parties now actually before the court concerning this subject-matter.

II. If any ground of equity were necessary (as it is not, in the cross-bill) to support the jurisdiction of a court of chancery over the claims now asserted by the company, they might be demanded even in an original bill, by reason of the favor with which courts of equity regard proceedings for the collection of RENTS.

Although where there is a perfectly plain, adequate, and complete remedy at law, by distress or suit, for the non-payment of rent, a bill in equity will not lie; yet equity will lay hold of any uncertainty or difficulty as a ground for original jurisdiction in chancery over the fixing and collection of rents.

"Equity will take jurisdiction in a case of rent when the time of payment or the amount to be paid is uncertain, or when the remedy by distress is evaded or obstructed by fraud, or is otherwise gone."

Ad. Eq., 237, p. 472.

Story Eq. Jur., §§ 684, 686.

If, in this case, as alleged by the market-dealers defendant, there is any doubt about the legality and propriety of

the fixing of the annual rental of the stalls by the Market Company and the Governor of the District without the concurrence of the Mayor and Common Council, then made impossible by the abolition, a long time previous, of that body by act of Congress, the original jurisdiction of a court of equity to fix the amount and order its payment is very clear upon the above and additional confirmatory authorities.

Or, supposing the amount to be paid for use and occupation to be sufficiently certain by reason of the fixing of the rents by the company and the Governor of the District, and the deliberate and irrevocable assent of the defendants thereto, still the uncertainty of the additional amount to be paid by the defendants as damages for their wrongful occupancy of the plaintiff's stalls and their prevention of the lawful sale thereof at auction would seem to justify the original jurisdiction of a court of equity to fix and decree payment of the same, particularly in view of the avoidance thereby of a multiplicity of suits, as hereafter alluded to.

III. Although the mere prevention of a multiplicity of similar suits, where the remedy at law is plain, adequate, and complete, may not of itself alone be sufficient to warrant original jurisdiction in equity, yet this prevention comes strongly in aid of the jurisdiction of equity courts when sought primarily on other grounds.

In this case, in addition to the other reasons for determining in this suit all other matters in controversy between the parties now before the court, we have the fact that those parties who commenced the proceedings in equity are over 205 in number, against every one of whom the

market company will be compelled to prosecute its action at law or in equity, in case this court does not, upon the present bill, cross-bill, answers, and evidence, make a complete determination of all matters in litigation, and give full relief to the company, if the prevailing party, further proceedings for which purpose should be allowed in the court below.

IV.

RECAPITULATION.

I.—*Standing of Complainants in Court.*

1. Seventy-four of the complainants did not purchase at the auction of 1872. (12.)

2. Nineteen were delinquent for rent prior to July 1, 1874. (15.)

3. One hundred and ninety-five were delinquent for rent prior to filing amended bill. (15.)

4. Five only of the purchasers at auction were not so delinquent. (15.)

5. All the complainants abandoned and surrendered their respective stalls about July 1, 1874. (14.)

6. All are estopped by their contracts and other acts from setting up a claim in perpetuity. (17.)

II.—*Term of Holding.*

1. The Market Company's theory harmonizes all the pertinent provisions of the charter, giving a sensible and intelligent effect to every clause, sentence, and word. (22.)

2. The dealers' theory expunges four of the five pertinent charter provisions. (24.)

3. If the literal meaning of one provision is inconsistent with the language of four others, the court will restrain the meaning within narrower limits. (26.)

4. The third provision (making a contract terminable at the choice of one of the parties) should be construed strictly and not extended. (28.)

5. The specific grant to the company of the power to sell, for a term of one or more years, should not give way to the indefinite language of the provision giving the tenant the right to retain possession so long as he chooses to occupy and pay rent. This choice must be made within his term of years. (29.)

6. The dealers' theory involves sundry absurdities and inconveniences. (29.)

7. The legislative history of the charter favors the Market Company's theory. (31.)

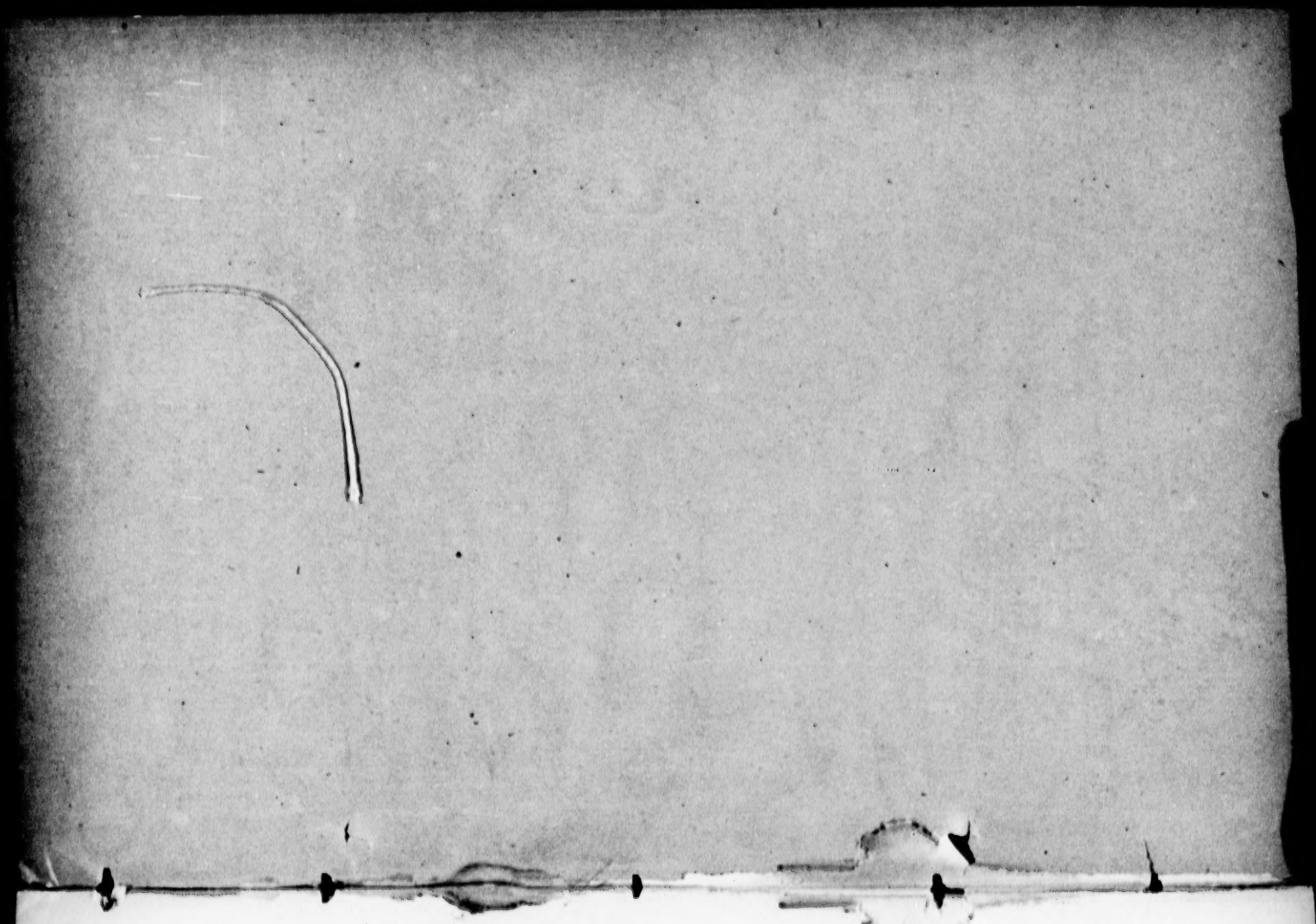
III.—*Cross Bill.*

1. Further proceedings should be directed in the inferior court, for the relief of the Market Company, under the prayers of the cross bill. (41.)

CONCLUSION.

Several matters suggested by the testimony are not mentioned in this brief, because they appear to be either immaterial or irrelevant.

WILLIAM BIRNEY,
Solicitor for the Washington Market Co.



Supreme Court of the United States.

No. 38.

THE WASHINGTON MARKET COMPANY,
APPELLANT,

vs.

JAMES A. HOFFMAN.

Appeal from the Supreme Court of the District of Columbia.

BRIEF OF COUNSEL FOR APPELLEE ON JURISDICTION TO HEAR APPEAL.

R. T. MERRICK,
M. F. MORRIS,
Of Counsel for Appellee.

Judd & Detweiler, Printers.

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The appellee moves to dismiss the appeal, and assigns three grounds therefor: 1st. That the matter in controversy is not capable of specific pecuniary valuation, and is not, therefore, a proper subject of appeal; 2d. That, even if it is capable of such valuation, the value neither appears from the record nor is shown by affidavit; 3d. That, even if the matter in controuersy is capable of such pecuniary valuation, it is not of the amount required by law to support an appeal to this Court.

The purpose of the proceedings, instituted by the complainant below, who is the appellee in this Court, was to enjoin and restrain a sale of certain stalls held by him under a previous sale and lease to him from the appellant, the

Market Company, which is a body corporate in the District of Columbia, organized for the purpose of constructing and managing a market house in the city of Washington. The claim of the complainant was, that the sale and lease to him was intended and understood to be perpetual, as long as the rent was paid. On the contrary, the theory of the Market Company was, that the sale and lease were only for two years; and they were accordingly proceeding to advertise and sell again. The court below, in accordance with the prayer of the complainant's bill, granted a perpetual injunction against a resale.

1. That the appellate power of this Court is confined to cases where the matter in dispute has a known and certain value, which can be proved and calculated in the ordinary mode of a business transaction, is well settled by a number of decisions.

Lee *vs.* Lee, 8 Peters, 44.
Barry *vs.* Mercieu, 5 Howard, 103.
Pratt *vs.* Fitzhugh, 1 Black, 271.
De Krafft *vs.* Barney, 2 Black, 704.
Sparrow *vs.* Strong, 3 Wallace, 97.
Ritchie *vs.* Mauro, 2 Peters, 243.

The matter in controversy here is not the stalls themselves, but whether a certain sale and lease thereof was for two years or in perpetuity. This does not seem to be capable of specific valuation. For it is not the amount of any contingent loss or damage which one of the parties may sustain by a decision against him, but upon the actual amount in dispute, that appellate jurisdiction depends.

Ross *vs.* Prentiss, 3 Howard, 771.

2. Even if the matter in dispute is capable of specific pecuniary valuation, such valuation does not appear on the record, and it has not been shown by affidavit or otherwise, as required by the rules and practice of this court.

Nowhere in the record is there any statement of the value of the matter in dispute, unless the bonus of $510 alleged by the complainant, Hoffman, in his bill to have been paid by him on account of his purchase, be equivalent to a statement of such valuation. There is no statement of the several bonuses paid by the other complainants. On pages 31 and 42 of the record is found a statement of arrears of rent alleged to be severally due from them. But if the jurisdiction of this court is to be determined by these amounts, then they are insufficient to support it, as will be shown in the next point.

There are no affidavits filed to show value; and, according to the practice of the court, such affidavits must be filed, if at all, before argument.

Rush *vs.* Parker, 5 Cranch, 287.
Ex parte Bradstreet, 7 Peters, 634.
Richmond *vs.* Milwaukee, 21 Howard, 391.
The Grace Girdler, 6 Wallace, 441.

3. Even if the matter in dispute is capable of specific pecuniary valuation, and such valuation appears from the record, or has been, or can be shown by affidavits, it is not of such amount as to justify the exercise of the appellate jurisdiction of this court.

It will be noticed that the original bill in this cause was filed by James A. Hoffman alone; and that subsequently in pursuance of an express stipulation between the counsel for the Market Company and the counsel for the dealers, in order to avoid a large number of independent suits, all involving the same legal questions, and for the convenience merely of the parties and to save expense, an amended bill was filed, signed by Hoffman alone, but purporting to be for the benefit of himself and upwards of 200 other persons, under similar circumstances, who are named in the bill and joined in it as co-complainants. The contracts of these several parties with the Market Company were separate and

independent. The sale of stalls by the company, it is true, was under one advertisement; but the purchases were all separate, the bonuses and the rates of rent different, and the agreements entirely distinct and independent. Indeed, were it not for the stipulation between the parties and the consent of the court below, the bill would be plainly multifarious, inasmuch as the only common interest was, not in reference to the same property, but in the construction of one law and of the acts of the market Company which led to the execution of the several, entirely similar, but legally and actually separate and independent contracts.

Now, it has been repeatedly decided by this Court that, even where there is a common fund, which is not the case here, but the interests in dispute are separate and distinct, and of an amount less than the statute requires, and where the joinder of parties is permitted by the mere indulgence of the Court, for its convenience, and to save expense, as in the case of creditors' bills, suits by seamen for salvage, suits by owners of cargoes claiming damages, suits for freight and the like, this Court will not entertain jurisdiction, although the whole fund in dispute may exceed the statutory amount.

Seaver *vs.* Bigelow, 5 Wallace, 208.
Oliver *vs.* Alexander, 6 Peters, 143.
United States *vs.* Carr, 8 Peters, 9.
Spear *vs.* Place, 11 Howard, 522.
Rich *vs.* Lambert, 12 Howard, 347.
Stratton *vs.* Jarvis, 8 Peters, 4.
Clifton *vs.* Shældon, 23 Howard, 481.
Camp *vs.* Stevens, 45 Conn., (Amer. Law Reg., Feb., 1879.)

The case of Shields *vs.* Thomas, (17 Howard, 3,) and Rodd *vs.* Heartt, (17 Wallace, 355,) are not opposed to the rule, and are, in the several opinions therein rendered, clearly distinguished from the cases just cited. The contest

in Shields *vs.* Thomas, was between an administrator and distributees, collectively, who had a common and undivided interest in the fund, and with whom, individually, the administrator had no contest as to their respective shares, or how the fund was to be divided between them. And hence it was properly held that, though the decree apportioned the fund between the distributees, and each share was less than $2,000, the administrator had a right to appeal, because the fund itself was more than $2,000.

In the case of Rodd *vs.* Heartt, (17 Wallace, 355,) the controversy was between several mortgagees, secured in a body by one mortgage, exceeding $2,000 on the one side, and the claims of mariners and material men on the other; and the Court held, "that, though no one of the claims allowed exceeded $2,000, yet the claim of the appellants, which was disallowed, exceeded that sum;" and, therefore, sustained the appeal. The question was not as to the respective shares, either of the mortgagees or of the mariners and material men; but whether the mortgage should have preference over the claims of the mariners and material men, or the contrary.

If, therefore, the interest of no one of the parties for whose benefit this suit is brought, is equal to the sum of $2,500, the appeal must be dismissed. The Court has decided in the cases of the Baltimore and Potomac Railroad Company *vs.* Grant, the same *vs.* Marmion, and several other cases quite recently, at the present term, that the act of Congress, of February 25, 1879, in reference to appeals from the supreme court of the District of Columbia, requires the dismissal of all pending appeals where the amount in dispute is less than $2,500. But, even under the previous law, which made the limitation $1,000, the present appeal cannot be sustained, if the appellee's premises are correct, inasmuch as all the amounts are under $1,000.

It will be noticed, that the decree of the supreme court

of the District of Columbia simply affirms the decree of the Special Term; and that the decree of the Special Term was two-fold, one part perpetually enjoining the Market Company against a resale of the stalls held by the several complainants, and the other decreeing that the complainants should pay the rents fixed by the company. As the latter part of the decree is in favor of the company and against the complainants, it is not to be supposed that they appeal from it, or that it is to be taken into consideration at all in determining the value of the matter in dispute; and, if it is to be so taken, it is evident that all the amounts are very much below the limitation even of the old law, (see pp. 31 and 42, of the Printed Record.) But, if the value of the supposed right to re-sell the stalls, which has been enjoined by the decree, and which is the only portion of the decree adverse to the appellant, is to be taken as the measure of the matter in dispute, and we are to ascertain that value from the statement in Hoffman's case, (Printed Record, p. 1,) which is the only thing in the record from which any idea of value can be derived, the sum there specified, which is $510, is certainly insufficient to justify an appeal to this Court.

Merits of the Case.

The defendant is a body politic and corporate, created such by act of Congress entitled "An act to incorporate the Washington Market Company," approved May 20, 1870.

The grounds upon which, by its charter, the said defendant was authorized to construct its buildings had been dedicated for the purpose of a public market in 1801, at the time of the dedication of the public squares and other public reservations of the city of Washington. The title to such grounds thereby passed to the Federal Government. By various acts of Congress this property was placed under the control of the municipal government of the city of Wash-

ington, and on the 6th of October, 1802, said municipal government located a market thereon, calling it the Centre Market.

Stalls or stands in said market were thereafter, from time to time, sold to market dealers, under the provisions of various municipal ordinances, in consideration of the payment by the purchaser of a certain premium or bonus for the right of occupancy, and a certain license or annual rental.

By the act of incorporation of May 20th, 1870, which gave to defendant possession and control of these premises, it was provided, in section 10, that said defendant should, within a reasonable time, purchase and pay for all buildings and fixtures upon said premises belonging to market dealers or other private individuals. An opportune and accidental fire occurring after the date of the act of incorporation materially lessened the burden imposed by this provision.

There are various other provisions of the charter, which it is unnecessary to consider in this case.

The solution of the question presented by the record must be found in the true construction of section 2 of the charter.

By that section it is provided that the building which defendant is authorized to construct and erect for a market "shall be used for no other purpose inconsistent therewith, but the same shall remain a public market;" and the section then proceeds as follows:

"And the said company shall, whenever any part or parts of said buildings, stalls, stands, and so forth, for market purposes, are ready for use or occupancy, offer the same for sale at public auction for one or more years, to the highest bidder or bidders, subject to the payment of an annual rent, the amount of which to be fixed by the mayor and common council of the city of Washington and the directors of this incorporation; and public notice shall be given of the day of said sale in two or more daily newspapers published in the city of Washington, for two weeks previous to said sale, and by handbills to be posted up in said market grounds

ten days previous thereto; and all subsequent sales and leases thereof shall be made on similar notice and in the same manner; and the said company shall have full power to assess and collect rents for the use of said buildings, stands, stalls, and grounds aforesaid. The stalls, stands, and privileges of all kinds in said market to be used for market purposes, when offered at public sale, shall be let to the highest bidder, and there shall be no bidding on the part of said company, directly or indirectly; but said company, with the consent of the mayor and aldermen of the the city of Washington, may fix a minimum rate of bids at such sale; and the person who shall offer the highest price at or beyond such minimum for any such stand, stall, or privilege, shall be entitled to the occupation thereof, and shall be considered as having the good-will and the right to retain the possession thereof so long as he chooses to occupy the same for his own business and pay the rent therefor; and the rent shall only be raised on application to the mayor and common council, who, after hearing the parties, may change and determine the same: Provided, however, That such right to the possession of such stands or stalls may be sold and transferred by such purchaser, under regulations to be fixed by the by-laws of said company, and in the case of the death of any such purchaser during the existence of his lease, it shall be disposed of as other personal property; and the municipal government of said city shall at all times have power to make and enforce such regulations with regard to said market and the management thereof as in their judgment the convenience, health, and safety of the community may require."

In pursuance of the powers conferred by the foregoing provision of the charter, the defendant did, in 1872, offer at auction to the highest bidder for the term of two years from the 1st day of July, 1872, to be held under its charter as aforesaid, a large number of stalls in its market building, at which sale the plaintiffs in this case severally and at various prices became the purchaser.

Subsequently, in 1874, at the expiration of two years from the first day of July, 1875, the defendant again offered for sale said stalls and stands so purchased by the plaintiffs, and

thereupon said plaintiffs having each severally in his own behalf paid the purchase money of his respective stall or stand, and the rent therefor, as the same accrued, due from time to time, claimed that they were entitled to hold possession thereof so long as they might respectively choose to occupy the same, each for his own business as a market dealer, and pay the rent therefor according to the provision of section 2 above quoted. To protect his right and property in this regard James A. Hoffman filed his bill in equity praying that the defendant might be enjoined from making sale of his stand or stall. By stipulation, at page 17 of the record, other plaintiffs numbered about one hundred were united with him in an amended bill. The record shows that at the time of the original sale in 1872, the stalls or stands were to be sold for two years.

It also shows that permits were issued by the defendant corporation to each respective purchaser of any stall or stand authorizing him to occupy the same for two years from the first day of July, 1872, upon paying the quarterly rent therefor, "and subject to conditions of the charter and by-laws of the company and the regulations of the company as from time to time established."

Each purchaser was required to sign the existing regulations of the company.

The only provision of the regulations affecting the tenure and term of the purchaser, is as follows:

"3. Rent shall be payable quarterly in advance, unless in cases where, by special written agreement, the payment is to be made monthly in advance, and any occupant who fails to pay his rent, or any sum due from him to the company, for ten days after the same becomes due, shall be deemed a delinquent, shall forfeit his right to his stall or stand, and shall be removed therefrom with all his property. No stall or stand, or any part thereof, shall be underlet without the prior written consent of the company. All sales and trans-

fers made by any occupant of his right to occupy his stall or stand shall be made in writing and delivered to the company, with a surrender of the permit then held by the occupant; and if the transfer is approved by the company a new permit will be issued to the purchaser. At the *end of the term of each occupant* he shall quit and deliver up his stand peaceably, and in as good order and condition, except ordinary wear as the same now is or may be put into by the company."

I.

The apparently inconsistent provisions of section 2 of the charter, to the effect that the defendant corporation might offer the stalls or stands in its market-house "at public auction, for *one or more years*, to the highest bidder or bidders," —and the subsequent guarantee to the purchaser at such sale, to the effect, that "the person who shall offer the highest price * * for any such stand, stall or privilege, shall be entitled to the occupation thereof, and shall be considered as having *the good will and the right to retain* the possession thereof, so *long as he chooses to occupy* the same, for his own business, and pay the rent therefor," can very easily be reconciled by the application of the first and most important rule for the construction of statutes, viz., that all parts of the statute are to be construed together, and, as far as practicable, a consistent and effective operation is to be given to each and every provision.

If the vendee, at the auction sale, has purchased a right of possession for two years only, and he must quit at the end of that period, then it follows that the latter part of the section, saying that such vendee shall be considered as having the good will and the right *to retain possession as long as he chooses to occupy the same*, is entirely nugatory, and without effect.

If, however, the section be so construed as to give the

defendant corporation the right to sell at public auction, for one or more years, in its discretion, and thereby make a contract with the purchaser by which he shall be obligated, in any event, to retain and pay rent for and during the period designated, whether he desires to do so or not, with a right in such purchaser, at the end of such designated time to surrender up the premises to the company or to retain possession thereof, "so long as he chooses to occupy the same for his own business, and pay the rent therefor," effective operation is given to every clause of the section, and a contract is made which, whilst just to the company, is not injurious and unfair to the market men. Under such a contract the latter may have the benefit of "the good will," which the statute evidently contemplated they might create, and which it regards as a valuable property, but which could not be created within any very limited period of occupancy.

The construction of the section of the charter under consideration, contended for by the market dealers, who purchased at the auction sale in 1872, is the same as that given to it by the corporators and the agents of the company at the time of the passage of the act.

(See testimony of George Oyster, p. 73.)
Theodore Barnes, p. 97.
Joseph C. Fearson, 79.
Thomas J. Murray, 103.
Exhibit E., pp. 21, 22, 23, 24, and 25.

II.

By a reference to the legislative history of the charter, the true construction of the statute becomes perfectly apparent.

A bill was introduced in the Senate to incorporate the defendant, January 11, 1869.

The second section of that bill was very similar to the

second section of the charter as it finally passed, a few years afterwards.

As originally introduced, the bill provided as follows: And the said company shall have the right to offer its stalls and stands in its building "for sale, at public auction, *for one or more years, to the highest bidder or bidders.*"

This provision was allowed to remain in the bill, but it was amended by the following proviso: "*Provided*, The stalls, stands, and privileges of all kinds in said market to be used for market purposes, when offered at public sale, shall be let to the highest bidder; but said company, with the consent of the mayor and aldermen of the city of Washington, may fix a minimum rate of bids at such sale; and the person who shall offer the highest price at or beyond such minimum for any such stall, stand, or privilege, *shall be entitled to the occupation thereof, and shall be considered as having the good-will and the right to retain possession thereof so long as he chooses to occupy the same for his own business and shall continue to pay the rent therefor, but shall have no right to dispose of such good-will to any other person*," &c.

The bill was not finally acted upon during that Congress.

On the 18th of March, 1870, a bill to incorporate the Washington Market Company passed the House and was sent to the Senate. This bill was identical with that last referred to, in so far as it related to the sale of stalls or stands, except that it contained a provision specifying that the purchaser at the auction sale might retain possession of the stall or stand purchased by him "*for the term for which the sale has been made and the rents are promptly paid.*" This provision was stricken out, and the following substituted therefor, viz: "*So long as he chooses to occupy the same for his own business and pay rent therefor.*"

Thus amended the bill passed and is the charter of the company as it now stands on the statute book.

It is, therefore, apparent that the legislature, while willing to confer a liberal bounty upon the corporation to be

created, was determined to protect the market men or market dealers, who were recognized as having some rights or equities in connection with the property to which the charter related.

In the case of Aldridge *vs.* Williams, 3 How., this Court has said: "The law, as it passed, is the will of the majority of both Houses, and the only way in which that will is spoken is the act itself: and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed."

The court will not allow its judgment to be influenced in expounding a law by any opinions or views that may have been expressed by individual members in the course of debate, but where a provision contained in a bill under consideration has been solemnly voted upon and stricken out, and another provision has also been voted upon and inserted in its stead, nothing it would seem could render more effective assistance in clearing up any ambiguity there might be in the provision that was adopted, and in getting at the true intention of the legislature than comparing what had been rejected with what had been approved and substituted.

III.

If the language of a statute provision conferring privileges upon a corporation is ambiguous or inconsistent with itself, a construction which favors the public convenience and trade and abridges the grant is to have preference over one that favors the company.

Stormfeltz *vs.* The Manor Turnpike Company, 13 Penn. St., 555.

Morris Canal and Banking Company, *vs.* Central R. R. Company, 16 N. J. Equity, 419.

Rice *vs.* Railroad Company, 1 Black, 380.

The Binghampton Bridge, 3 Wall., 74,

IV.

In all cases of repugnancy it is the last portion of the statute that is taken to express the intention of the law-maker.

Quick *vs.* Whitewater Township, 7 Ind., 570.
Packer *vs.* The Sunbury & Erie R. R. Co., 19 Penn. St., 211.

The purchasers at the auction sale bought and contracted under the charter of the company and in accordance with its provision.

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